THE UNIVERSITY OF ALBERTA

A HISTORICAL SURVEY OF THE BOARD OF REFERENCE IN ALBERTA

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies for acceptance, a thesis entitled "A Historical Survey of the Board of Reference in Alberta," submitted by Joseph Francis Swan in partial fulfilment of the requirements for the degree of Master of Education.

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ABSTRACT

The study examines the nature and effects of teacher tenure legislation in Alberta as revealed in the operations of the Board of Reference.

Following the selection from various sources of criteria for tenure legislation, the study proceeds to describe the evolution and criticize the form of the provisions in the School Act. The operations of the Board are analyzed in some detail, and a considerable number of hearings and decisions are used to illustrate the interpretations placed by the Board upon the statutory framework within which it has worked. Some conclusions are drawn from the relative frequencies of decisions for and against teachers, and from the bases on which these decisions have been made.

With respect to the legislation, the findings consist largely of an evaluation based on the criteria adopted at the outset. The most serious defect is found to be the lack of any requirement that a school board, in terminating the contract of a teacher, state its reasons for so doing. The study also suggests that the term "tenure" and "probation" should be defined and used in the Act, and that the jurisdiction of the Board and of the Minister should be further clarified.

Little fault is found with the application of the legislation. While the consistency of a few of its decisions is questionable, the Board has proved to be an effective protector of teacher tenure and, therefore, of efficient school operation. The record of its activities indicates that a very desirable improvement in the relations between

teachers and trustees has taken place during the period in which it has operated.

The study concludes with recommendations based upon the findings, these being chiefly concerned with proposals for amendments to the legislation, and an enumeration of related problems deserving investigation. The latter include questions concerning the future of the Board's personnel and jurisdiction. Among the recommendations is one that the Board, in spite of its recent limited activity, be retained as the tenure commission for Alberta.

ACKNOWLEDGMENTS

The writer wishes to express his gratitude to all who have assisted him with this undertaking. To the Alberta Teachers' Association, to the Alberta School Trustees' Association and to the Department of Education he is indebted, not only for the use of source materials, but also for the opportunity to interview officials who, through their close contacts with the Board of Reference, have gathered information which they have kindly shared with him.

Thanks are due to the Departments of Education of British Columbia, Saskatchewan and Manitoba for the explanations so generously provided with respect to tenure legislation in their respective provinces.

The writer is especially anxious to record his indebtedness to the members of his thesis committee. Dr. A. W. Reeves and Dr. E. W. Buxton have offered helpful, sympathetic criticism of the earlier drafts. Dr. H. T. Sparby, Chairman of the committee, in addition to reading the drafts, has given constant guidance with the organization and presentation of the material. Whatever merit the product may possess in these respects is largely due to his wise and friendly encouragement.

To all these persons and organizations, whose interest and assistance have made the work much less arduous than it otherwise would have been, the writer tenders his warmest thanks.

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CHAPTER I

INTRODUCTION

I. THE STUDY

This investigation is a survey of the form and effects of teacher tenure legislation in Alberta, with particular attention to the Board of Reference. The material studied is, first, the provisions of the School Act setting forth the powers and duties of the Board; and, second, the records of the operations of this agency. The main section of the study is concerned with the operations of the Board since its establishment by the Legislature in 1926. Statutory provisions related to teacher contracts in effect prior to that date have been reviewed briefly in order to provide background, and some attention has been given to amendments to these provisions in so far as they have affected the operations of the Board. The study, therefore, deals with the history of tenure legislation in Alberta since the creation of the Province with detailed attention to one phase of its development during the last thirty-five years.

II. PURPOSE OF THE STUDY

The study starts with the assumption that the primary aim of tenure legislation is to promote the efficiency of school operation, an assumption for which ample support has been found in the authorities consulted. The general purpose of the study has been to reach conclusions concerning the effectiveness with which the Board of Reference has contributed to the

attainment of this aim in Alberta. The major questions which the study attempts to answer may be stated as follows:

1. To what extent do the statutory provisions under which the Board has operated, viewed in conjunction with other enactments related to teacher contracts, meet the requirements of sound tenure legislation?

2. To what extent do the many amendments made in these provisions represent an increasingly close approach to these requirements?

3. What implications do the decisions handed down by the Board of Reference have with respect to the conduct of teachers and trustees?

4. Is there any indication that decisions of the Board of Reference have not been conducive to good school operation? Specifically, to what extent have these decisions tended:

(a) to freeze incompetents in the teaching profession?

(b) to discourage professional self-improvement on the part of teachers?

5. What, if any, influences have changes in the form of school administration exerted on the activities of the Board of Reference?

6. What, if any, light do the operations of the Board of Reference throw on the evolution of teacher-trustee relations in this Province?

7. To what extent does the history of the Board of Reference, viewed in conjunction with present conditions of school operation in Alberta, justify its continued existence? What, if any indications are there that the constitution of the Board should be modified, or that some other agency for the settling of disputes between school boards and teachers should be established?

III. CRITERIA OF TENURE LEGISLATION

Answers to these questions demand an appeal to criteria for judging the soundness of tenure legislation and the operations of tenure commissions. The criteria found in some of the authorities consulted are discussed below. Before entering upon this discussion, however, it will be well to define the term "tenure."

Definition of "tenure." As used by the authorities consulted and in this investigation, "tenure" means a set of rights, conveyed and protected by law, whereby a teacher cannot be dismissed from his position except under procedures laid down by statute. "Tenure teacher" means one who lawfully enjoys such rights, one who, therefore, can be said to possess "tenure status."

Views of authorities consulted. By way of introducing the criteria, it may be said that the authorities all agree that the legislation should guarantee tenure status to teachers who have successfully completed a period of probationary service. They all hold that the legislation should protect such teachers against arbitrary dismissal by setting forth the conditions which must be met in order that their contracts may be lawfully terminated. There is a large measure of unanimity with respect to these conditions.

A summary of the criteria of tenure legislation as given by the authorities is now used as a basis for more detailed examination. A

start is made with Weber,[1] whose views may be stated as follows:

(1) The legislation should provide a probationary period of from two to five years. During this period,

> It should be made easy for school authorities to deny tenure status to teachers who, in the judgment of the bodies governing schools, are not good calculated risks.[2]

(2) The legislation should give tenure as long as the teacher is physically and emotionally fit to teach, continues to grow in service and conforms to school laws and regulations.

(3) The tenure provisions should be consonant with those sections of the law governing certification, salaries and retirement age.

(4) The legislation should set forth the conditions for the termination of contracts of tenure teachers, which conditions should include the following:

(a) A warning to the teacher at least sixty days prior to the notice of termination, giving a written statement of the board's reason for its intended action.

(b) Written notice of termination to be given the teacher at least ninety days before the close of the school year.

(c) The right of the teacher to demand a hearing before the dismissing board.

(d) The possibility of a review of the board's decision by the courts.

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[1] C. A. Weber. Personnel Problems of School Administrators. New York: McGraw Hill, 1954.

[2] Ibid., p. 159.

(5) On the part of the tenure teacher, the legislation should require return to duty following the expiration of any leave of absence granted by the board, and the giving of thirty days' notice of resignation.

Weber's warning notice to a tenure teacher one hundred fifty days prior to the end of the school year seems somewhat unrealistic. This requirement would, presumably, make it impossible for a board to dismiss a teacher to whom it had not issued a warning within the first quarter of the year. This would impose a heavy burden on those responsible for decisions concerning terminations of contract. It seems, further, to imply that a teacher whose work in the early part of the year does not require a warning, may be counted on to give satisfactory service throughout the year. Also open to question is the justice of requiring a school board to give ninety days' notice of dismissal while a teacher is required to give only thirty days' notice of resignation.

Chandler and Petty[3] do not differ substantially from Weber in their view of the generally accepted features of tenure laws. They give the usual length of the probationary period as three years, and insist that tenure status should automatically follow satisfactory completion of this period. They are, perhaps, somewhat more emphatic on the right of a board to dismiss a tenure teacher <u>for good and just cause</u>, and express a preference for legislation which specifically sets forth the grounds for dismissal. In support of this opinion, they list the causes which courts have accepted,

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[3] B. J. Chandler and P. V. Petty. <u>Personnel Management in School Administration</u>, Yonkers on Hudson, New York: World Book Company, 1955. Chap. X.

namely incompetency, insubordination, immorality, neglect of duty and abolition of position, and deal with the interpretations which have been given to these terms. They also require tenure rights to cease on the attainment of compulsory retirement age.

Ellsbree and Reutter,[4] after discussing the arguments in favor of and against the legislation spelling out grounds for dismissal of tenure teachers, pronounce for such definition. To the list advocated by Chandler and Petty, they add physical unfitness.

Moore and Walters[5] agree with Weber in insisting on a written statement to the teacher giving the reasons for dismissal. Their view in this respect is stated as follows:

> A properly drafted tenure law requires the board to charge the teacher, in writing, with his specific deficiencies.[6]

They regard straitened economic circumstances as just cause for termination of contract, but feel that the law should require a board, in such circumstances, to give favourable treatment to tenure, as opposed to probationary teachers.

Summary. Aside from the reservations expressed above with respect to Weber's views, the criteria set forth by the authorities are found to be acceptable. On the basis of the reading done, the essentials of sound

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[4]W.S.Ellsbree and E.E. Reutter. Staff Personnel in the Public Schools. New York: Prentice Hall, 1954.

[5]H. E. Moore and N. B. Walters. Personnel Administration in Education. New York: Harper and Brothers, 1955.

[6]Ibid., p. 271.

tenure legislation are summarized as follows:

1. A probationary period during which the teacher's contract may be terminated without appeal. Questions concerning the optimum length of this period, conditions for the granting of tenure status, and the desirability of probation being a feature of each new contract will be discussed in Chapter III, when the Alberta legislation is criticized.

2. Specification of the grounds for termination of the contract of a tenure teacher.

3. Enumeration of the steps to be followed by a school board in terminating the contract of a tenure teacher, these steps to include the giving of ample written notice.

4. Requirement that the notice to the teacher state the alleged grounds for termination.

5. Imposition upon a teacher wishing to terminate a contract of conditions with respect to length of notice similar to those imposed upon a board.

6. Provision for appeal by a dismissed tenure teacher to a disinterested authority created by statute and having power to bind both parties to the dispute.

7. Procedures at appeal hearings consonant with those required in a court of law.

It is in relation to these criteria that answers to the questions set out on page 2 will be sought.

Before passing to the next section, one additional comment on the

criteria is in order. While Weber regards emotional fitness as a requirement for tenure, none of the authorities consulted includes among the causes for dismissal the mental illness of the teacher. In view of the increasing prevalence of this infirmity, the omission is noteworthy. The Alberta Act has recently been amended to provide for termination of a teacher's contract on this ground.[7] Appeal, however, lies to the Minister of Education rather than to the Board of Reference.

IV. JUSTIFICATION OF THE STUDY

The study is justified by the evidence that tenure legislation, both in its form and in its application, is of vital concern, not only to the teaching profession, but to all persons involved in school administration. A summary of this evidence is now given.

Interest in tenure legislation in United States. Some indication of the importance attached to tenure legislation by teachers in the United States is provided by the attention given this problem in recent years by the National Education Association. In 1954, this organization produced a discussion pamphlet on Teacher Tenure. The section entitled "Why Tenure?" advances several reasons why such legislation is regarded as essential by the teaching profession. The following quotations are indicative of the position taken in the pamphlet:

> Any program, such as a tenure law, which frees the schools from the domination of prejudicial individuals and groups is an aid to democratic education. When security thru tenure prevails, teachers

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[7] S. A. 1961, c. 71, s. 23.

> are more likely to become an integral part of their respective communities ..... Tenure helps to make teaching a profession, rather than a procession.[8]

Later sections give advice to teachers on steps which they may take to secure tenure legislation and outline the essentials of such legislation. A final section urges teachers to study the form and operation of tenure laws throughout the country. The responsibilities of teachers in this respect are summed up as follows:

> One of the tasks facing the teaching profession is to study existing teacher tenure laws with a view to discovering their weak spots and to propose corrective amendments. This task is highly important.[9]

In 1957, the Committee on Tenure and Academic Freedom of the National Education Association published a further pamphlet on the same subject. This contains sections on Probationary Service, Tenure Rights, Dismissal Procedures and Appeal from School Board Decisions. The following quotation, taken from the concluding paragraph, again indicates the concern with which the N. E. A. views the problem of tenure:

> Tenure legislation should be obtained in all states for all professionally qualified teachers. Tenure legislation already enacted should be reexamined. A great deal of the task is in the realm of public relations. The teachers themselves must understand why and what kind of legislation is best for the profession, for the schools, and for the children. Then they must sell this program to the legislators and the public.[10]

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[8]National Education Association of the United States. Teacher Tenure. Discussion pamphlet prepared by the Department of Classroom Teachers and Research Division. Washington 6, D.C. N.E.A., 1954, pp.5,6.

[9]Ibid., p. 20.

[10]National Education Association of the United States. Trends in Teacher Tenure thru Legislation and Court Decision. N. E. A. Research Division, Washington 6, D. C. 1957, p. 44.

Presumably with the intention of encouraging the study of tenure legislation which it had advocated in these pamphlets, the N. E. A., in November, 1958, issued a Research Memo, giving a state-by-state abstract of tenure laws throughout the United States. This was followed in October, 1960 by a bibliography containing no less than forty-six books or articles on the subject published within the preceding decade. The views of some of the writers listed in this bibliography are discussed in the following paragraphs.

Chandler and Petty, dealing with the difficulties inherent in the framing of tenure legislation, have this to say:

> Thus far no one has been able to draft a law that will protect capable teachers and at the same time make it easy to eliminate the obviously unfit.[11]

On the need for further study in this area of school administration, they comment as follows:

> Authoritative answers to questions concerning the effects of teacher tenure legislation must await findings of carefully planned and conducted research studies. It is still debatable whether the sense of security for tenure teachers is purchased at too great a cost in terms of general educational quality and progress.[12]

Chamberlain and Kindred[13] also deal at some length with the strengths and weaknesses of tenure legislation. They stress the lack of objective

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[11]Chandler and Petty, op. cit., p. 346.

[12]Ibid., p. 356.

[13]L. M. Chamberlain and L. W. Kindred. The Teacher and School Organization. Englewood Cliffs, N. J. Prentice Hall, Inc. 1958, pp. 66 et seq.

evidence concerning its effects on interest in professional improvement, and agree that further investigation into this and allied questions is most desirable.

Ellsbree and Reutter give much attention to the essential elements of tenure legislation. They conclude that there are still many unresolved issues; their views in this respect are summarized as follows:

> There are several points in relation to tenure on which conflicting views are present, within the profession as well as in the citizenry at large. These issues need to be resolved through research and discussion.[14]

On the matter of one of the debatable issues, namely the establishment of a tenure commission to replace the regular courts for the hearing of teachers' appeals from dismissals, they say:

> Much thinking and experimentation are needed in regard to details of such a commission's composition and operation, but the possibilities seem very promising.[15]

Interest in tenure legislation in Alberta. Enough has been said to indicate the concern of educators in the United States. Within this Province, evidence is not lacking to support the view that tenure legislation has been and is still regarded as of major significance by those involved in school administration in Alberta.

The Alberta Teachers' Association has consistently made the achievement and maintenance of security of employment one of its major

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[14] W. S. Ellsbree and E. E. Reutter. Staff Personnel in the Public Schools. New York: Prentice Hall, 1954, p. 211.

[15] Ibid., p. 214.

objectives. One cannot read the record of the Association appearing in the current Handbook[16] without being struck by the frequency of the references to the struggle in which the Association has engaged for improvement in tenure legislation. Further references to this struggle will be made in Chapter III.

Proof that the Association's interest in the problem has not diminished is furnished by its Supplementary Brief submitted to the Cameron Commission on Education, in which the whole of Part II is devoted to Tenure for Alberta Teachers.[17]

The concern of the Alberta School Trustees' Association and, incidentally, its dissatisfaction with the present statutory provisions, are indicated by the fact that it has had for some years a standing policy resolution reading as follows:

> Resolved that the Board of Reference be abolished and a Board of Arbitration, representative of both teachers and school boards, be set up for purposes of dealing with disputes arising out of the termination of teachers' contracts.[18]

The evidence produced in this section has indicated that tenure legislation is of sufficient concern among educational administrators and teachers to justify this study.

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[16]A Brief Historic Record of the A. T. A., Handbook 1960, pp. 16 - 19.

[17]Alberta Teachers' Association Supplementary Brief to Alberta Royal Commission on Education, September, 1958, pp. 25 - 37.

[18]Handbook for the Fifty Third (1959) Annual Convention of the Alberta School Trustees' Association, p. 74.

V. REVIEW OF RELATED INVESTIGATIONS

In addition to checking the publications mentioned above, the investigator has made a search of the theses listed in the catalogue of the library of the Faculty of Education, University of Alberta, for the purpose of finding relevant material. He has, however, failed to uncover any investigation bearing directly upon tenure law in Alberta. Only three of these theses, those of Lamb, Ross and Bargen, are studies based on school legislation. As his title indicates, Lamb[19] is interested only in liability arising from school accidents. Ross[20] attempts to survey the application of all aspects of school law in all parts of Canada. His treatment is necessarily somewhat general. He does, it is true, devote a chapter to termination of contracts. In this chapter,[21] he cites a number of Alberta cases, without, however, making any effort to relate the decisions handed down to the directions set out in the Act for the Board of Reference. Only one of the cases to which he refers has been identified as having come before the Board. Furthermore, his investigation does not include any cases arising within the last thirteen years.

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[19] R. L. Lamb. "The Legal Liability of School Boards and Teachers for Accidents in the Schools." M. Ed. thesis, University of Toronto, 1959.

[20] C. J. Ross. "The Courts and the Canadian Public Schools." Ph. D. thesis, University of Chicago, 1948.

[21] Ibid., Chapter XIII, Dismissal of Teachers.

Bargen's exhaustive work[22] is written with the rights of the pupil, rather than those of the teacher, chiefly in mind. While he discusses in detail many of the legal provisions which govern a teacher's relations with his pupils, he devotes no attention to teacher tenure as such.

Information concerning a fourth thesis, the one coming closest to the subject of this investigation, has been obtained from the Research Officer of the Canadian Education Association. This officer states[23] that the only study devoted to teacher tenure legislation in Canada is that of Lewis.[24] This, according to the same source of information, attempts an examination of the trends across Canada up to 1940, with the major purpose of showing the undesirable effects of insecurity of tenure on the education system. Since it deals with conditions throughout Canada, the investigator has assumed that it does not treat exhaustively those in any Province. It certainly says nothing of tenure conditions in the last twenty years.

VI. LIMITATIONS OF THE STUDY

The study is confined to tenure legislation in Alberta, with most of the attention focused on the period from 1930 to 1960. While the final

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[22] P. F. Bargen, "The Legal Status of the Canadian Public School Pupil." Ph. D. thesis, University of Alberta, 1959.

[23] Letter from Research Officer, Canadian Education Association, to writer, dated January 23, 1961.

[24] A. C. Lewis. "Contracts and Tenure of Canadian Teachers." D. Paed. thesis, University of Toronto, 1940.

writing has been proceeding, it has been learned that some cases may come before the Board in 1961. Because it illustrates a feature of the legislation with which the study is concerned, the application for one of these potential hearings is mentioned in Chapter III and again in Chapter VIII. Aside from these brief references, however, 1961 cases are excluded from the study.

Only those statutory provisions directly related to the operations of the Board of Reference are discussed in detail. In addition to this legislation, the study gives as much attention as the data permit to the actual operations of the Board.

Some limitations have been imposed by the availability and comprehensiveness of the data. This applies particularly to the discussion of cases attempted in Chapters IV to VII inclusive. As will become evident in Chapter IV, very little information has been uncovered about operations of the Board prior to 1930. Even for more recent years, the reports vary greatly in length and detail. In some cases, the inadequacy or complete unavailability of data has precluded the drawing of definite conclusions.

Justification for the limitation to Alberta is found in the constitutional framework within which education in Canada is provided. Under the British North America Act, education is a provincial responsibility. While those responsible for framing and administering statutory provisions related to teacher tenure in Alberta may gain some insight into the problem by considering conditions elsewhere, this Province must, in the last analysis, enact and administer its own tenure laws. The

geographical limitation imposed is, therefore, a logical deduction from the constitution under which our schools operate.

It is, of course, admitted that tenure legislation is of vital concern outside of this Province. A comparative study of such legislation in Canada and in the United States, or in several countries of the Commonwealth, would certainly be a most useful and rewarding undertaking. The writer hopes that his investigation may make some slight contribution to such a larger study.

VII. SOURCES OF DATA

The sources from which data have been obtained fall into three categories, as indicated below:-

1. Documents used for information bearing directly on the study. Most important in this class were the Statutes of Alberta from 1905 to 1961, which were read at the Rutherford Law Library, University of Alberta. Several volumes of the Alberta Gazette were also checked in the same library. Copies of pertinent legislation of British Columbia and Saskatchewan were kindly provided by the Departments of Education of those provinces. The reports of the Board of Reference were read on the files to which the Department of Education generously permitted access. Material supplementing these reports was discovered in the Annual Reports of the Department and in files which the Alberta School Trustees' Association was good enough to place at the investigator's disposal. Some very valuable information related to the part played by the teachers of the Province in the development of tenure legislation was found in the

copies of the A. T. A. Magazine, which the writer was allowed to read in the offices of the Alberta Teachers' Association. Finally, the Handbooks of both Trustees' and Teachers' Associations and the Brief presented by the Alberta Teachers' Association to the Alberta Royal Commission on Education afforded insights into the attitudes of these Associations towards some of the problems with which the study has attempted to deal.

2. Publications consulted for general background. The major aim in reading these publications was to obtain a basis on which to build a set of criteria for teacher tenure legislation, in relation to which Alberta law and practice might be considered. Several of the works consulted have been mentioned in this chapter. A complete listing will be found in the bibliography.

3. Theses dealing with problems closely related to those of this study. These were checked with the two-fold purpose, first of discovering interrelationships and, second, of avoiding possible duplications. The results of this checking have been summarized earlier in this chapter; the complete list of theses considered relevant to the study is provided in the bibliography.

VIII. METHODS OF PROCEDURE

Most of the investigator's efforts have been devoted to analysis of documents. In studying the legal framework within which the Board of Reference has operated, he has made an effort to identify the relevant provisions in their initial forms and to trace their development by examining the amendments and rewritings made throughout the period under

review. An attempt has been made to criticize the legislation by applying to it the criteria set forth earlier in this chapter.

The operations of the Board have been examined by reading the reports and correspondence appearing in the sources listed above. While every case coming before the Board has been investigated, no effort has been made to describe all cases except for purposes of the enumeration and classification in Chapter V. A selection has been made of cases considered to have significant implications for the study. To the extent which the imformation found has permitted, several of these cases have been analyzed in Chapters IV, VI and VII.

One important departure from regular procedure must be mentioned. In investigations into processes of law, it is customary to identify cases by naming the principals involved. This procedure has not been followed. In view of the personal nature of much of the evidence considered by the Board, and in view of the possible effects of the conventional method of reporting upon the professional careers of some of the persons involved, no names of school inspectors, teachers or trustees have been disclosed. A reader wishing to identify the persons involved in any of the hearings discussed in this study will have to seek permission to do so by reference to information in the keeping of one or more of the authorities mentioned above.

The information obtained from the documents has been supplemented by means of interviews with persons whose professional responsibilities have brought them into close contact with the operations of the Board. Among the officials with whom the investigator has spoken are the present and immediately past Deputy Ministers of the Department of Education,

officials of the Alberta Teachers' Association and of the Alberta School Trustees' Association, and legal counsel who have acted for these Associations. These interviews have not only provided valuable supplementary information, but have been of great assistance in the task of interpreting that obtained from the documents.

IX. ORGANIZATION OF REMAINDER OF THESIS

The investigation is set out in three major divisions, as indicated below:

Part I deals with the statutory provisions. Here, after sketching the legislation concerning teachers' contracts preceding the establishment of the Board, the investigator traces in some detail the provisions under which the Board has operated up to the present. This part includes a survey of the more significant amendments and some criticism, both of the original provisions and of the more important changes which they have undergone. Other sections of the School Act are considered briefly in so far as they have contributed to tenure legislation or have influenced the operations of the Board.

Part II, the heart of the investigation, is concerned with the operations of the Board. In this part, the hearings of the Board are analyzed with the purpose of revealing their distribution throughout the period involved and the nature of the disputes from which they have arisen. The study proceeds to classify decisions handed down by the Board, showing how many have been made in favour of the teacher and of the school board respectively, and on what bases they have been made. The decisions

are related to the grounds for dismissal enumerated in the statute, so as to draw some conclusions concerning the interpretations which the Board has placed on these grounds. Throughout this portion of the study, an effort is made to view the operations of the Board in the light of the criteria accepted for tenure legislation in general and for the procedure of such a commission in particular.

Some cases are discussed in detail because of their special interest as illustrations of various facets of the legislation. These are used to indicate the practical implications of such terms as "reasonable action," "misconduct" and "inefficiency." A few are given special attention because of the light which they throw upon the interrelationship of the roles of teacher and principal, or other phases of school administration. Most of those selected for examination, however, have been chosen because they provide a basis for answers to the questions raised in this chapter.

In Part III, the investigator draws some conclusions from the manner in which the Board has operated and the decisions which it has rendered. He also offers some recommendations concerning the future form and function of this agent of tenure legislation in Alberta.

USE OF TERMS AND ABBREVIATIONS

Throughout the study, "Board" is used to mean the Board of Reference; "Department" means the Department of Education, and "Minister" the Minister of Education.

In the text and also in the footnotes, the following abbreviations

will be found with the meanings indicated:

Act .....The School Act of Alberta.

A. S. T. A. ..... Alberta School Trustees' Association.

A. T. A. ..... Alberta Teachers' Association (or Alliance)

c ..... Chapter in the statutes, of a given year.

N. E. A. ..... National Education Association of the United States.

R. S. A. ..... Revised Statutes of Alberta of a given year.

S. A. ..... Statutes of Alberta of a given year.

s. ..... section of a given statute.

PART I: STATUTORY PROVISIONS

CHAPTER II

LEGISLATION UP TO AND INCLUDING THE ESTABLISHMENT OF THE BOARD OF REFERENCE IN 1926

In this and the succeeding chapter, the statutory provisions under which the Board has operated are considered. The provisions governing teachers' contracts prior to 1921 are first presented and discussed briefly. Since the Board of Conciliation, established in that year, is the prototype of the Board of Reference, the legislation setting it up is considered in some detail. A survey of the changes effected by the establishment, five years later, of the Board of Reference under its present name concludes this chapter.

I. ENGAGEMENT AND DISMISSAL OF TEACHERS 1905-1920

The provisions governing engagement and dismissal of teachers in effect during this period are found in the School Ordinance of 1901.[1] The pertinent sections are quoted below:

> 150. A teacher shall not be engaged except under authority of a resolution of the board passed at a regular or special meeting of the board.
>
> 151. The contract entered into shall be in the form prescribed by the Commissioner, but such form may be altered or amended as may be mutually agreed upon by the contracting parties, provided that such alterations and amendments are not inconsistent with any of the provisions of this Ordinance or the regulations of the Department.

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[1] School Ordinances of the North West Territories, 1901, c.21, ss. 150-153.

152. The contract shall be deemed valid and binding if signed by the teacher and by the chairman on behalf of the board.

153. Any teacher who has been suspended or dismissed by the board may appeal to the Commissioner who shall have power to take evidence and confirm or reverse the decision of the board and if he reverses the decision he may order the reinstatement of such teacher; Provided that in case there is no appeal to the Commissioner or in the event of any appeal if the decision of the board is sustained, the teacher shall not be entitled to salary from and after the date of such suspension or dismissal.

If the basic element of tenure legislation is the provision of some protection for teachers against arbitrary dismissal by their employing boards, then, by virtue of section 153, such legislation can be said to have existed when the Province was established. From this point of view it might be claimed that Alberta has never been without tenure legislation. Many changes in the provisions governing the making and termination of contracts have been enacted during the ensuing years, including those with which this investigation is concerned. Aside from the insertion of the grounds for dismissal, however, section 153 of the Ordinance has been carried forward without substantial change, and appears in the present School Act.[2] This fundamental portion of our tenure legislation was given us by those who framed the School Ordinances of the North West Territories in the decades preceding the establishment of our Province.

Excepting such amendments as the substitution of Minister for Commissioner (1910), the provisions quoted above remained almost unchanged over the next twenty years. They appear as sections 193 to

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[2]R.S.A. 1955, c. 297, s. 350.

196 inclusive of the School Act, Chapter 51 of the Revised Statutes of Alberta, 1922. The only significant change during this period was that related to the proviso to section 153, which appears as follows in section 196 of the 1922 Act:

"Provided that the teacher shall not be entitled to salary from and after the date of his suspension or dismissal."[3]

The investigator regards this amendment as interesting because of its implications with respect to the views of the legislators concerning the relation of the outcome of teachers' appeals to their entitlement to salary. Unfortunately, however, he has been unable to locate the occasion of the change, and can only surmise that it was made as part of the revision of 1922. The injustice was corrected by an amendment in 1923, which restored the proviso to its original form.

II. BOARD OF CONCILIATION, 1921

It has been shown that the provisions concerning engagement and dismissal underwent little change during the first fifteen years following the establishment of the province. An important development concerning settlement of disputes between teachers and boards did, however, occur in 1921. In that year, there was inserted in the Ordinance a new section 151a concerning the "Board of Conciliation." With some minor rearrangements, the new provision appears as section 197 in the School

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[3]S.A. 1922, c. 51, s. 196.

Act of 1922, and reads as follows:

(1) Whenever it is made to appear to the Minister that any dispute or disagreement between any board of trustees and their teacher or teachers has arisen or may arise, where such disagreement or dispute in the opinion of the Minister relates to the proper carrying out of the contract entered into between the board of trustees and such teacher or teachers, the Minister may appoint a board, which shall be known as a "board of conciliation," to inquire into and investigate any such disagreement or dispute and to make such report thereon as is just and reasonable.

(2) In the conduct of any such investigation the said board may take evidence under oath or upon affirmation.

(3) No board of conciliation shall have power to intervene in connection with negotiations between any teacher and a school board with respect to any new contract or any extension or amendment or renewal of any contract already in existence.

(4) Every such board of conciliation shall consist of three members, one representing the school trustees of the Province, one representing the school teachers of the Province, and the chairman of the board, who shall be neither a trustee nor a teacher.

(5) The members of a board of conciliation shall receive such remuneration as the Lieutenant Governor in Council may determine.[4]

The Board of Conciliation thus established was the forerunner of the Board of Reference to be set up five years later, and, indeed, differed only slightly from the original form of the latter body. Its establishment would seem to be significant in the following respects:

(1) It indicates that the Legislature was of the opinion that some teacher-trustee disputes may best be dealt with by an authority other than the Minister of Education. It is to be noted, however, that the right of a suspended or dismissed teacher to appeal to the Minister and the power of the latter to decide such an appeal were at first

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[4]R.S.A. 1922, c. 51, s. 197.

unaffected by the new legislation. As a matter of fact, as already pointed out, the right to make such an appeal is still retained in the present section 350 by a teacher who has been summarily dismissed.

(2) While the possibility of need for nongovernmental intervention was recognized, resort to such intervention was not required. The Minister was free to use the new agency or not, as he saw fit.

(3) The desirability of teacher and trustee representation on the Board was assumed. This assumption was, initially, applied to the selection of personnel for the Board of Reference, but was later disregarded.

III. CRITICISM OF LEGISLATION OF 1921

An examination of this legislation is now made in the light of the criteria set out in Chapter I.

Viewed from this point of view, section 151a of 1921 seems to be a rather crude effort at tenure legislation. It suffers from the following defects:

1. There is no mention of a probationary period. The dispute of any teacher with his or her employing board was subject to investigation, regardless of the length of time during which the teacher had been under engagement. It will be found that the probationary period is not recognized in Alberta legislation until 1956.

2. The new section gave no indication of what might be regarded as just cause for dismissal. No attempt at such specification was made until thirteen years later. Until that time, the Board was left to

provide its own bases for its decisions.

3. Neither in the new section nor in any of the contemporary provisions related to teacher contracts was any definite procedure required of a board in order to terminate a teacher's contract. No such procedure is set out in our School Act prior to 1931. Until that time, therefore, the investigating Board could not rule in favour of the teacher because of the employing board's failure to respect statutory requirements concerning date and length of notice. Such requirements did not exist.

4. The most serious defect, however, is the lack of power on the part of the Board to make its decision binding on the parties to the dispute. In the last analysis, it was merely an investigating and reporting body. The records of the Alberta Teachers' Alliance[5] indicate that its leaders were very conscious of this defect in the legislation and were resolved to do all in their power to have it corrected. Their constant efforts to have the Board given the binding power required by sound tenure legislation did not, however, achieve success until 1934.

IV. OPERATIONS OF THE BOARD OF CONCILIATION

Efforts to locate some official record of the operations of the Board of Conciliation have been largely fruitless. The only mention made in the Annual Reports of The Department is a brief statement in the section written by the Deputy Minister for 1921.[6] This merely

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[5]A brief Historic Record of the Alberta Teachers' Association, A.T.A. Handbook, 1960, pp. 16-19.

[6]Annual Report, Department of Education, 1921, p. 13.

summarizes the legislation and refers to two requests for hearings, both growing out of termination of contracts by school boards. One of these applications, it is stated, was ruled out on statutory grounds; the outcome of the other is not given.

The absence of any other mention of the Board of Conciliation in the Department's reports for 1921 to 1925 inclusive suggests that the Board was not very active. Support for this conclusion has been found in the April, 1926 issue of the Magazine of the Alberta Teachers' Alliance. The pages of this magazine are filled with criticisms of the old and expressions of hope with respect to the new legislation.

Concerning the 1921 provisions, the following is a typical comment:

> The teachers asked for some such plan six years ago. In place of that, the legislature created some kind of a board which was quite useless, ...
> If it was ever convoked, it was by mistake. It has not been in operation for many years.[7]

Evidence has been found in the same magazine that the legislation of 1926 resulted from representations made to the government by the Alberta Teachers' Alliance. These representations were clearly based on the dissatisfaction with the Board of Conciliation so forcibly expressed in the above quotation. It is also clear that the teachers felt that the provisions of 1926 meant an important victory in their fight for tenure. Two quotations are given in support of this view. Under the title Real Board of Conciliation for Teachers before the Legislature, the Editorial in the same April issue carries the following statement:

> During the past week, the Minister of Education, in fulfilment of his promise to the A.T.A. delegation made some weeks ago, introduced certain amendments to the School Act, including the one given below.[8]

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[7]A.T.A. Magazine, April, 1926, p. 17. [8]Ibid.

There follows a quotation of the new section 197, which is reproduced in the next part of this Chapter.

In his report to the Annual General Meeting of the Alliance of the same year, the President, referring to the amendment then under consideration, spoke as follows: "The proposed Board will have large powers and its decision will be final."[9]

It will become clear as the study proceeds that the optimism with which the Board of Reference was greeted by the leaders of the A.T.A. proved to be somewhat premature.

V. ESTABLISHMENT AND ORIGINAL POWERS OF BOARD OF REFERENCE, 1926

The provisions concerning the Board of Conciliation, quoted in the preceding section, remained in the School Act until 1926. In that year, section 197 was struck out, and a new section of the same number brought into existence the Board of Reference. Since this enactment, with its subsequent amendments, is the legal basis of this inquiry, it is quoted in full below:

(1) There shall be constituted a board to be known as the Board of Reference, to serve as a board of conciliation or as a board of arbitration, as the case may be, and the said board shall consist of three members to be appointed by the Lieutenant Governor of the Province, one to represent the school trustees of the Province, one to represent the school teachers of the Province, and a third member who shall be neither trustee nor teacher, and who shall act as chairman of the board.

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[9] *Ibid.*, p. 7.

(2) When any dispute or disagreement arises between a school board and its teacher or teachers, either party to the dispute or disagreement may make application to the Minister to refer such dispute to the Board of Reference.

(3) All such applications to the Minister shall be accompanied by a full and complete statement of the nature of the complaint or dispute, verified by a statutory declaration on the part of the party or parties making the said application.

(4) Upon receipt of such application, the Minister shall refer the dispute or disagreement in question to the Board of Reference, which shall institute such investigations as may seem to be warranted and necessary, and shall deliver a report of its findings to the Minister, who shall transmit a copy of the same to the several parties to the dispute or disagreement.

(5) The Board of Reference shall have power also to act as a board of arbitration, upon the request of both parties to any dispute between a board or trustees and its teacher or teachers, and when so acting the Board of Reference may, for the purpose of procuring the attendance of any person as a witness at such arbitration, serve such person with a notice requiring him to attend thereon, which notice shall be served in the same way and have the same effect as a notice requiring the attendance of a witness and production by him of any documents at the hearing or trial of any action, but no such person shall be compelled under any such notice to produce any document which he could not be compelled to produce on the trial of an action, and the award of the Board in such cases shall be binding upon both parties and have the same force and effect as an award made under the Arbitration Act.

(6) The Board of Reference shall have power also to deal with such other matters as may be referred to it from time to time by the Lieutenant Governor in Council.

(7) The members of the Board of Reference shall receive such remuneration as the Lieutenant Governor in Council may from time to time determine.[10]

VI. CRITICISM OF LEGISLATION OF 1926

The criteria are again invoked in order to criticise this legislation. For this purpose, it will be necessary to consider only

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[10]S.A. 1926, c. 57, s. 5.

those respects in which the new provisions differed from those of 1921.

Aside from the new name, the main changes effected in the constitution and powers of the Board were the following:

(1) The constitution of the Board was made mandatory rather than a matter of ministerial discretion, and reference of a dispute to it was required by an application from either party. This would seem to have been a move in the right direction. The criteria demand the establishment of a disinterested authority to whom a teacher may appeal against what he considers to be an unjust dismissal. Furthermore, one of the basic purposes of tenure legislation is to protect teachers from political pressures,[11] and such protection cannot be regarded as complete while a member of the government has the power to decide what disputes, if any, should be investigated.

(2) The Board was empowered to deal with any dispute between a board and a teacher. Its predecessor had been restricted to disputes "related to the proper carrying out of the contract." It will be noted that this restriction was reimposed later. Its removal now would seem to have been an error. Tenure legislation is concerned only with termination of teachers' contracts. Widening the scope of the Board's investigations involved the risk of burdening it with matters not related to tenure. This criticism applies even more strongly to subsection (6), which seems to be aimed at making the Board a "Jack of all trades."

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[11] W.S. Elsbree and E.E. Reutter, Staff Personnel in the Public Schools: New York: Prentice Hall, 1954, p. 184.

(3) The Board of Reference might, on the request of both parties, act as a board of arbitration, and its decisions then became binding upon both parties. Except under these circumstances, however, the Board continued to have the functions merely of investigating and reporting on disputes, without any power to make rulings as to their settlement. Presumably the Board might, in its report, make certain recommendations, but neither it nor the Minister was given any power to require the parties to the dispute to accept these recommendations.

This change, largely ineffectual as it was, seems to represent an effort to remove the most serious defect in the Board of Conciliation, namely its lack of power to bind both parties by its decisions. The fact that the effort was made suggests that those who framed the provisions accepted such power as a desideratum in tenure legislation. The government, however, was apparently not yet ready to commit itself on this important principle, and the power was granted only under conditions which made its exercise highly improbable. The teachers were obliged to continue their demands for "satisfactory appeal against dismissal."[12]

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[12]Alberta Teachers' Association Handbook, 1960, p. 18.

CHAPTER III

AMENDMENTS TO ORIGINAL STATUTORY PROVISIONS

This chapter surveys and criticizes the amendments which have been made during the last thirty-five years to the legislation setting up the Board of Reference. Including the rewritings of 1931, 1934, 1942 and 1955, it has been amended thirteen times. This fact is indicative of the rather constant criticism to which the legislation has been subjected by both teachers and trustees, and of the importance attached to it by the Department of Education.

For the sake of analysis, the amendments are not considered chronologically, but rather under the following divisions:

(1) Personnel of the Board.

(2) Powers of the Board.

(3) Operations of the Board.

(4) Grounds for termination of contract.

(5) Probationary period.

Following the recording of the amendments under each of the above headings, a criticism is attempted on the basis of the criteria set out in Chapter I. An attempt is also made to reveal some of the more significant similarities and differences between the Alberta legislation and that in effect in British Columbia and Saskatchewan.

I. PERSONNEL OF THE BOARD

From 1921 to 1934, the Act required the appointment, originally by the Minister and later by the Lieutenant Governor in Council, of a Board of three members, one of whom was to be a representative of the teachers and another a representative of the trustees of the Province. The reference to teacher and trustee members was dropped in 1934,[1] and since that time the Board has been composed of District Court judges.

On this problem, the criteria and the authorities from whom they are derived do not give much assistance. All the writers consulted insist on the establishment of a disinterested authority, but opinions concerning the persons to be appointed to this authority are not frequently expressed. Elsbree and Reutter[2] do argue for a "tenure commission," and suggest that it should be made up of representatives of teachers and administrators, universities preparing teachers, parent groups and citizens. It seems to the investigator that the practicability of organizing a commission so composed which could go into action whenever and wherever required is questionable, as also is the amount of time which might be required to reach a consensus in such a group. The writers themselves apparently feel some such doubts, for they conclude their treatment of this question with the following statement: "Much thinking and experimentation are needed in regard to

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[1]S.A. 1934, c. 30, s.9.

[2]W.S. Elsbree and E.E. Reutter, Staff Personnel in the Public Schools. New York: Prentice Hall, 1954.

details of such a commission's composition ....."[3]

In spite of such theoretical considerations, it would be difficult to dispute the wisdom of the changes made in 1934. Neither the A.T.A. nor the A.S.T.A. could then muster the administrative experience and competence which both now possess. In view, however, of the developments which have taken place in both these organizations in recent years and in view of the steady increase of complexity in school administration, it is possible that a return to the earlier composition of the Board would be desirable. In this connection, it is interesting to note that the A.S.T.A. has gone on record as favouring such a return.[4] While the A.T.A. has not enunciated any policy in this connection, it has not expressed any opposition to the recommendation of the Cameron Commission that it "accept the responsibility of jurisdiction over the competence and ethics of its membership....."[5] A return will be made to this problem in the concluding chapter of this study.

II. POWERS OF THE BOARD

A number of amendments have extended the powers of the Board and others have imposed limitations upon the scope of its operations. Of the

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[3]Ibid., p. 214.

[4]Standing policy resolution No. 4 quoted in Handbook for 54th (1960) Annual Convention of the Alberta School Trustees' Association, p.70.

[5]Report of the Royal Commission on Education in Alberta, Recommendation 155, p. 283.

first type, by far the most important is that which made the Board's rulings unconditionally binding upon both parties to the dispute. In 1932 an amendment to section 160[6] made the decisions of the Board on disputes related to termination of contract binding on both parties. By the new subsection (4), the Board was required to "determine the dispute or disagreement," and the new (4a) stated that "every determination so made shall be binding and conclusive upon all parties to such dispute or disagreement." By this amendment, the Board became a quasi-judicial body, with power not only to investigate disputes, but also to settle them.

The change so made unquestionably brought the provisions governing the Board closer to the requirements of the criteria for tenure legislation. The proposition that the body to which the teacher appeals must be able to require the Board seeking to dismiss him to accept its decision is so self-evident that the authorities do not give it much emphasis, but it is certainly implied in their references to hearings by the courts or by "tenure commissions." It is difficult to see how the "guarantee of security" which Chandler and Petty[7] demand for tenure teachers can be attained while still preserving for boards the dismissal rights "for good and just cause" which the same writers defend, unless the body hearing appeals is given this power.

An interesting insight into the struggle over tenure legislation

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[6]S.A. 1932, c.34, s.15.

[7]B.J. Chandler and P.V. Petty, Personnel Management in School Administration. Yonkers on Hudson, New York; World Book Co., 1955, pp. 292, 348.

which was proceeding in Alberta during this first half of the thirties is provided by the fact that this important amendment of 1932 did not go into effect until 1934. This delay is discussed at greater length in Chapter IV in connection with the hearings conducted during this period.

In 1935, the evolution of tenure legislation suffered a severe set-back when an amendment forbade any reference to the Board based on a termination of contract effective in July. This amendment made it possible for either teacher or board to terminate a contract at the end of a school year without incurring the risk of a hearing by the Board. This certainly constituted a drastic limitation on the scope of the Board's powers, and filled the teachers with dismay. The purpose was made quite clear by the concluding sentence in the amendment, which reads as follows:

> "..... and nothing in this section shall affect the right of either party to such an agreement to terminate the same by a notice which takes effect in the month of July."[8]

Viewed in the light of the criteria, this amendment, of course, represented a violent retrogression. It left teachers without any protection and freed boards from any restraint with respect to dismissals at the end of the school year, the time at which the vast majority of them were occurring.

The feelings which the amendment aroused in the teaching

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[8]S.A. 1935, c. 44, s. 8.

profession are eloquently expressed in the Editorial appearing in the September 1935 issue of the A.T.A. Magazine. After giving vent to his disappointment over the Legislature's treatment of the Teaching Profession Bill, the Editor comes to a climax in the following words:

> These were mere pin-pricks, however, compared with the blow which fell when the Legislature stripped the teachers of the strong shield known as the Board of Reference. Under the Legislation of 1934 the Board of Reference had proved to the hilt the contention of the A.T.A. that teachers were being thrown out of employment for false, trivial and irrelevant reasons and that it had served the true interests of education by securing the reinstatement of teachers unjustly dismissed. In spite of the facts, in spite of the plea of members (whom we shall long hold in honour) that responsible legislation should be given a reasonable period of trial; in spite of the widespread dismay among the employees involved, the Board of Reference was made ineffective.[9]

This Editorial is of interest, not only in relation to this amendment, but also as a comment on the hearings of 1934, some of which are discussed in later chapters.

This crippling limitation on the scope of the Board's operations was struck out in 1937.[10]

Two further limitations of scope deserve brief mention. In 1941,[11] the clauses giving the Board power to serve "as a board of conciliation or as a board of arbitration" were struck out. This change was overdue, since certain powers of the Board with respect to compelling attendance were no longer dependent on its functioning in either of these capacities.

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[9]A.T.A. Magazine, September, 1935, p. 3.

[10]S.A. 1937, c. 43, s. 8.

[11]S.A. 1941, c. 35, s. 15.

In the same year, the scope of the Board's operations was further limited by restricting it to disputes "with respect to the termination or cancellation of a contract."[12]

Here legislation was presumably following practice; the investigator has been unable to find record of any other type of dispute coming before the Board. Regardless of the background, however, it is held that the limitation, late as it was in coming, was quite justifiable in view of the purposes of the legislation. Initially the Board had been given the duty of considering <u>any</u> dispute between a school board and its teacher. Some such disputes have little relationship to teacher tenure, which essentially is based on conditions governing termination of contracts.

This discussion of limitations upon the Board's powers closes with a brief glance at the relations between the jurisdiction of the Board and that of the Minister. In 1938, an amendment[13] removed the power of the Board to deal with any termination of contract which had been approved by the Minister. This meant that a teacher who had been summarily dismissed and whose dismissal had been upheld by the Minister could not henceforth bring his appeal to the Board. It also meant that terminations of contract for which ministerial approval had been

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[12] <u>Ibid</u>.

[13] S.A. 1938, c. 37, s. 6.

obtained because of occurrence at times other than the end of the school year were no longer referable to the Board. The limitation has remained in force.

There can be no doubt that, as long as the Minister has authority to rule on some classes of termination of contract, it is necessary to avoid conflict of jurisdiction between him and the Board. From this point of view, the 1938 amendment was necessary.

As pointed out in the next paragraph, however, there are now reasons to think that it failed clearly to differentiate between the two jurisdictions. Aside from this uncertainty, the question remains whether the Minister should have any jurisdiction in this field; whether, once an agency such as the Board of Reference has been established, it should not be empowered to rule on all types of termination. This is a question to which the study will return in the concluding chapter.

The relationship between the jurisdiction of the Minister and that of the Board has been brought into prominence by an application which has reached the Department in June 1961, just as this study comes to an end. The teacher involved in a summary dismissal made under section 350 of the School Act has launched an appeal for a hearing by the Board of Reference. The Department, which for many years had treated summary dismissals as referable to the Minister only, decided to seek an opinion from the Attorney General's Department. This Department has expressed the view that section 350, in providing for appeal to and investigation by the Minister, does not preclude a hearing by the Board of Reference,

if the teacher prefers the latter.[14] On the basis of this opinion, the Department is proceeding with arrangements for a hearing by the Board. If the Board itself rules that the case is within its jurisdiction, the Legislature will presumably be faced with the question whether a teacher who has been summarily dismissed should continue to be able to appeal to either the Minister or the Board. Whatever may be the outcome, the case points up the possibility that teachers involved in previous dismissals, had they been aware of their right to do so, might also have elected hearing by the Board rather than by the Minister. The decision made on the matter will certainly be one of the most important in the history of tenure legislation in this Province.

III. OPERATIONS OF THE BOARD

Form of application for hearing. It will be noted that the original provisions of 1921 said nothing about the procedure to be followed by either party to the dispute in order to gain a hearing by the Board. In the enactment of 1926,[15] the procedure to be followed in bringing disputes to the attention of the Minister was formalized by the requirements of subsection (3), the most important of which was "a full and complete statement of the nature of the complaint or dispute." This provision will be considered in the light of the criteria.

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[14]Opinion given by Attorney General's Department to Deputy Minister of Education, June 14, 1961.

[15]S.A. 1926, c. 57, s. 5.

The "full and complete statement" was presumably intended to reveal the grounds for termination alleged by the school board. This requirement is fully in accord with the criteria. It is true that, as set out in Chapter I, these require only that "the notice to the teacher state the alleged grounds for termination." It is surely to be inferred, however, that the body hearing and ruling on the dispute must be aware of these allegations, and that this necessity is one of the main purposes of requiring their inclusion in the notice to the teacher. The authorities consulted are unanimous in this view. An article in the American School Board Journal,[16] for example, which deals largely with the procedure to be followed at hearings, insists that "the charges against the teacher must be substantiated by evidence properly introduced." Still more directly, Moore and Walters[17] state that "a properly drafted tenure law requires the board to charge the teacher in writing with his specific deficiencies."

There would thus seem to be little doubt that this administrative requirement of our Act, carried forward from 1926 into the present section 353(1),[18] is entirely consonant with the criteria. The satisfaction engendered by the realization that this principle of tenure

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[16]L. E. McCann, "Statutes and Court Decisions Determine Requirements for Dismissal Hearings," American School Board Journal, Vol. 125 (July, 1952), pp. 21-22.

[17]H. E. Moore and N. B. Walters. Personnel Administration in Education. New York, Harper and Bros. 1955, p. 271.

[18]R.S.A. 1955, c. 297.

legislation has been recognized in the statute throughout this period is, however, tempered by the discovery that it has not been applied with the strictness which its importance demands. The study will return to this matter when the operations of the Board are being analyzed in Chapter V.

Date of application for hearing. The amendments dealing with the limiting date for receipt of applications are now considered.

The provisions of 1926 are silent on this matter. As a result of the amendment of 1932,[19] applications were required to be filed "within ten days after the date upon which the dispute or disagreement shall have arisen." This requirement remained in effect until 1938, when a further amendment[20] struck out the former limitation and inserted "not later than the tenth day of July next following the arising of the dispute." This rather loose arrangement, strangely enough, remained in effect until the rewriting of 1952[21] moved the deadline for the receipt of applications forward from July 10 to "June 30 and within twenty days of the receipt of notice of termination or the arising of the dispute, as the case may be." In 1954,[22] the present limitations were inserted.

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[19]S.A. 1932, c. 34, s. 15.

[20]S.A. 1938, c. 37, s. 6.

[21]S.A. 1952, c. 80, ss. 349 - 354.

[22]S.A. 1954, c. 94, s. 45.

These require the application to be submitted

> not later than the thirtieth day of June in any school year, and
> (a) within twenty days of the giving of the notice of termination of the contract to the applicant, or
> (b) within twenty days of the date on which the dispute or disagreement is stated in writing, if no notice has been given.

The number of amendments suggests that this aspect of the legislation has caused some administrative difficulties. The analysis of cases will reveal that some questions of interpretation have arisen.

Since the criteria do not bear directly upon this feature of the legislation, the following criticism of these amendments is largely subjective.

The setting of a deadline for making an application for a hearing by the Board recognizes the need to have disputes settled as soon as practicable. At the same time, it requires a quick decision on the part of the teacher, who may well have received notice of termination on or shortly before June 15. The question whether or not to make application could be one on which the teacher might wish to seek legal advice. He or his professional organization might find it difficult to obtain such advice on short notice, especially if the number of cases pending should be large. Incidentally, the deadline now in effect rules out applications by boards receiving notices from teachers in the first two weeks of July. Since, however, this study is interested in the legislation only from the point of view of teacher tenure, this discrimination against school boards is not relevant, except in so far as it prompts the question why the Act continues to give them access

to the Board.

The investigator gives it as his opinion that the present provisions governing date of application represent a reasonable compromise between the desirability of speedy settlement, on the one hand, and the need to provide time for consideration by the teacher, on the other.

Withdrawal of application for hearing. A new section 351a inserted in 1954[23] provided for the withdrawal of an application prior to investigation by the Board. For lack of authoritative opinions, the criticism must, again, be subjective.

In his reading of the Department's files, the investigator has been impressed by the volume of correspondence which the Registrar has been obliged to handle in order to arrange hearings. In connection with each case, it has been necessary to write letters, often several of them, to the Board, to counsel for the A.T.A. and for the A.S.T.A., as well as to the individual teacher and school board involved. For the sake of the parties, both of whose plans depend upon the decision to be handed down, officials have felt compelled to complete this processing and to have hearings set as quickly as possible. The records indicate that they have frequently worked under great pressure in an effort to expedite the whole procedure. This pressure has been diminished to some degree since the receipt of a legal opinion to the effect that a

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[23] Ibid.

teacher whose appeal against termination of contract is awaiting hearing may tender a resignation and still have his action proceed before the Board.[24] This course might be desirable as a means of vindication of professional reputation. Nevertheless, in view of the work which an application imposes upon the Registrar and of the responsibility felt by this official for rapid completion of this work, the advisability of permitting an application to be withdrawn at any time prior to hearing may be questioned. It is granted that it is desirable to encourage, or, at least, to permit "out of court" settlements, but ill-considered applications should be discouraged. This matter will be considered further in the final chapter.

Procedures at hearings. Statutory provisions governing procedures preceding Board hearings having been examined, it will be well to look briefly at those concerning procedure at hearings. In this respect, the Act has little to say, and this little is concerned entirely with powers to require attendance and cooperation on the part of witnesses. Subsection (2) of the original section[25] empowered the Board to "take evidence under oath or upon affirmation." Strangely enough, in the enactment of 1926,[26] this power was limited to occasions on which the Board was acting as a board of arbitration, but this limitation was removed in 1927. The powers of the Board in this respect are now stated succintly in section 356 by way of reference to the Public Inquiries Act.

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[24]Opinion given by Attorney General's Department, July 2, 1957, in reply to inquiry from Department of Education, June 25, 1957.

[25]School Ordinance, section 151a, inserted in S.A.1921,c.43,s.10.

[26]S.A. 1926, c. 57, s. 5.

Under this provision, the Board has the same power

(a) to force the attendance of witnesses, and

(b) to compel them to give evidence, as is vested in a court of record in civil cases.[27]

The authorities consulted have not dealt at length with procedure at hearings. They are in agreement that this procedure should be formalized. Garber,[28] for example, insists that hearings must follow "regular court procedures." The School Act certainly implies the need for such procedure and, especially in view of the present constitution of the Board, there would seem to be little cause for misgiving in this respect. There remains, however, the question of "closed hearings." Elsbree and Reutter[29] set out some arguments in favour of this practice, stating that the emotionally disturbing effects of certain types of evidence upon the teacher may be severely aggravated by the presence of members of the community. They proceed to argue that the anticipation of such unpleasant experiences may be a deterrent influencing a teacher's decision with respect to application for a hearing. In this connection, it is interesting to note that the Board has itself raised the question whether the high rate of withdrawals in recent years may indicate some apprehension

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[27]R.S.A. 1955, c. 258, s. 3.

[28]L. O. Garber, article in The Nation's Schools vol. 48 (December), 1951, pp. 63-64.

[29]W.S. Elsbree and E. Reutter, Staff Personnel in the Public Schools. New York: Prentice Hall, 1954, p. 206.

on the part of appelant teachers.[30] The fact that teachers have occasionally failed to appear at hearings would seem to suggest that the question is not an idle one.

The investigator finds it difficult to come to a firm decision on this matter. In his reading of the records of Board hearings, he has wondered whether the wide publicity given some of them was desirable, not only because of its possible effects on the decisions handed down, but also because of its almost inevitable effects on the professional reputations of the teachers. In a later chapter, a hearing illustrating these dangers will be described. On the other hand, the principle of public hearings is strongly entrenched in British administration of justice, and education is widely regarded as "everyone's business." Perhaps an appelant should be prepared to accept the risks involved in an open hearing.

IV. GROUNDS FOR TERMINATION OF CONTRACT

The study now turns to those amendments bearing upon the second essential of sound tenure legislation set out in Chapter I, namely "the specification of the grounds for termination of the contract of a tenure teacher."

It is not until the rewriting of 1934 that any such specification appears in the Alberta School Act. In that year, in the new subsection

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[30]Letter from Judge Buchanan to Registrar, Department of Education, June 2, 1959.

(6)[31] the Board is, for the first time given some specific directions on which to base its decisions. These directions, which have been continued without change and appear as the present subsection (3) of section 355, are quoted below:

> (6) Where the board of trustees purports to terminate the contract, if the Board of Reference is satisfied that
>
> (a) the board of trustees in terminating the contract did not act as reasonable persons should act in the discharge of their duties as trustees, and
>
> (b) the contract was not terminated,
>
> (i) because of the misconduct or inefficiency of the teacher,
>
> (ii) by reason of anything in the mode of life, character, or disposition of the teacher of a nature calculated to make the retention of the teacher detrimental to the proper and efficient conduct of the school for which the trustees are responsible,
>
> (iii) by reason of the financial necessities or circumstances of the district, or
>
> (iv) for the reason that the termination of the contract is conducive to the general welfare of the district and the betterment of the educational facilities therein, the Board of Reference shall disallow the action of the board of trustees.

The criteria adopted leave no question concerning the need for some specification such as that in the subsection just quoted. What of its contents?

In relation to the lists offered by the authorities, the Alberta specification seems to be reasonably complete. The "insubordination" mentioned by Chandler an d Petty[32] might be held to be included under

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[31]S.A. 1934, c. 30, s. 9.

[32]B.J. Chandler and P.V. Petty. Personnel Management in School Administration. Yonkers on Hudson, N.Y. World Book Co., 1955, p. 300.

"misconduct," and the "abolition of position" of the same writers is presumably covered in the general statement in (b) (IV). School boards might well claim, however, that the addition of both these terms is desirable.

The Alberta list makes no mention of "physical unfitness," the inclusion of which is advocated by Elsbree and Reutter.[33] The investigator is of the opinion that a teacher whose physical condition had deteriorated to the extent of impairing his performance of classroom duties would be quite unlikely to protest the termination of his contract. In view of the provisions for accumulation of sick leave now appearing in salary schedules, this condition does not seem to warrant specification.

The question of the desirability of including "mental illness" has already been considered. It has been pointed out that the Act covers this matter in another section, providing for investigation by the Minister.

Some attention is now given to the intent of the subsection.

The directions seem to put the burden of proof upon the teacher. They require him to satisfy the Board that certain conditions justifying termination of contract are <u>not</u> present. It might be argued that legislation designed to protect teachers should put the burden of proof upon the school board, by requiring it to show that at least some of these conditions <u>are</u> present. If this contention is correct, the subsection

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[33]Elsbree and Reutter, <u>op. cit.</u>, p. 195.

should read as follows:

> (3) Where the board of trustees purports to terminate the contract, unless the Board of Reference is satisfied that
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> (a) the board of trustees ..... acted as reasonable persons ..... and
>
> (b) the contract was terminated .... the Board of Reference shall disallow the action of the board of trustees.

It is maintained that the statute should require the party seeking to terminate the contract to justify its action, especially since a professional reputation is at stake. The present wording does not suggest this view.

What of the conditions set forth, presumably as justifying termination? They may be summarized as requiring the school board, first, to have acted "as reasonable persons should act in the discharge of their duties as trustees"; and second, to have had one or more of four specific reasons for its action.

In the general condition, the key word is "reasonable." As the investigation proceeds, it will be necessary to look for signs of what the Board has considered to be "reasonable" and "unreasonable" action on the part of trustees. It may then be possible to decide whether this general condition has any value to a body charged with applying the legislation.

The term "misconduct" in Clause (b) (i) of the section quoted above is heavily charged with a connotation of personal morality. There is no doubt about the stand of the authorities consulted on this issue; they

unanimously accept immorality as a valid ground for termination. At the same time, in the context in which the Alberta provisions are set, there may be some question about the wisdom of directing the Board to investigate and rule on such matters. "Gross misconduct" is one of the grounds for summary dismissal, from which, until 1961, appeal has, in practice, lain to the Minister only.[34] As pointed out earlier in this chapter, there is currently some doubt concerning the legality of this limitation on the right of appeal of a teacher who has been summarily dismissed. If, however, the Minister is to retain exclusive jurisdiction over such appeals, it might be wise to remove from the directions to the Board any reference to "misconduct," and to require a school board dismissing a teacher on such grounds to make the report to the Minister required by section 350. It would seem that one authority only should be empowered to make a final ruling on a charge of this type. It will be shown that moral conduct of the teacher has been an issue at some Board hearings, as the statutory provisions have implied that it may be. In the light of the above considerations, "insubordination" might be a more fitting term than "misconduct."

No fault is found with the inclusion of the term "inefficiency." All the authorities agree that tenure legislation should not protect the inefficient teacher. There remains, however, the question of how the Board is to decide whether the teacher has been inefficient. The investigation will return to this question.

While the authorities do recognize the justifiable abolition of

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[34]R. S. A. 1955, c. 297, s. 350.

a teaching position as ground for termination, no mention has been found of "the financial necessities or circumstances of the district" given in (b) (11). In view of the economic conditions which have prevailed in this Province throughout the past twenty years, it would seem that this expression might well be deleted.

The authorities point out that the list of grounds for termination in tenure legislation is commonly concluded by a general term, such as "other just cause." The purpose is to protect school boards against possible oversight on the part of those framing the legislation. Presumably the expressions used in (b) (IV) are intended to serve this purpose; they are, therefore, acceptable.

V. PROBATIONARY PERIOD

In view of the general acceptance of the probationary period as a feature of tenure legislation, it is surprising to discover that it has only recently found its way into the Alberta Act. It is also surprising that it came in, so to speak, negatively rather than positively. One might expect to find this principle enunciated, as in British Columbia,[35] in the provisions governing appointment and dismissal of teachers. Like Saskatchewan,[36] however, Alberta recognizes the principle by excluding from the benefits of its tenure legislation teachers whose

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[35]British Columbia Manual of School Law, Division 5, Procedures for Appointment of Teachers, p. 118.

[36]Teacher Tenure Act, Revised Statutes of Saskatchewan 1953, c. 185, s. 3.

contracts have not been in effect for a minimum period. Neither the Alberta nor the Saskatchewan Act uses the term "probationary."

Until 1956, any teacher in Alberta had the right of appeal to the Board of Reference. In that year, an amendment[37] forbade reference to the Board when the teacher's contract had been in effect for less than twelve months. In practice, this means that every teacher is on probation throughout the first year of his service with any school board, since he has no right of appeal to the Board against termination of contract.

In Chapter I, the investigator undertook, in dealing with this feature of the Alberta legislation, to discuss the following questions:

(1) What indications can be found concerning an optimum length of the probationary period?

(2) In addition to length of service, what, if any, factors should govern the acquisition of tenure status?

(3) How desirable is it that probation be made a feature of each contract into which a teacher enters?

These questions will now be used as a basis for criticism of this portion of the provisions under study.

No unanimity has been found with respect to the optimum length of the probationary period. As pointed out in Chapter I, the authorities consulted give examples of periods varying from two to five years. Chandler and Petty[38] give the usual period in the United States as three

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[37]S.A. 1956, c. 49, s. 52.

[38]Chandler and Petty, op. cit., p. 348.

years, an estimate with which Elsbree and Reutter[39] agree. In British Columbia, the period is generally one year, although the Superintendent of Education, on application of a school board, may grant permission to extend the probationary appointment of a teacher for one further year.[40] In Saskatchewan, the Tenure Act requires two years of service.[41]

In comparison with practices elsewhere, it would seem that Alberta has kept the length of its probationary period to a minimum. Any attempt to assess the adequacy of the one year term would involve inquiries into the methods of selecting candidates for entrance to the Faculty of Education and the length and content of the training given in this institution. It is not proposed to pursue the question this far; this study has indicated that it is one deserving further attention.

The reference just made to teacher training leads naturally to the second question. At the present time, length of service with the employing board is the sole factor governing right of appeal against dismissal in Alberta. In this respect, a teacher with one year of service holding a Junior E certificate has the same status as a degree teacher with long years of experience. The investigator would suggest that consideration might be given to making the right to a Board hearing dependent upon a minimum, say two years, of professional training.

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[39]Elsbree and Reutter, op. cit., p. 191.

[40]British Columbia Manual of School Law, Division 5.

[41]Revised Statutes of Saskatchewan, 1953, c. 185, s. 3.

The third question is one with respect to which the provisions of the Alberta legislation on first examination, appear questionable. It would seem unreasonable that a teacher, regardless of training and experience, should be required to serve a period of probation with every board with which he enters into engagement; it would appear unjust that the security provided by the legislation should be lost each time a teacher moves from one administrative unit to another. This, nevertheless, is the situation, not only in Alberta, but in almost all areas about which information has been obtained. In British Columbia, a teacher is on probation for at least the first year of employment with any school board; in Saskatchewan, with respect to terminations of contract effective at the end of the school year, a teacher must have had at least two successive years of service with the same board in order to qualify for the protection afforded by the Teacher Tenure Act. With respect to the situation in the United States, Elsbree and Reutter[42] say: "Service on a tenure basis in other school districts may be used occasionally as a basis for reducing the probationary period necessary in a given school system." The word "occasionally" here suggests that the number of school boards permitting teachers to transfer previously acquired tenure in this fashion is relatively small. This impression is confirmed by a more recent statement in the Research Bulletin of the National Education Association[43] to the effect that Pennsylvania is the only state in which a tenure teacher does

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[42]Elsbree and Reutter, op. cit,, p. 191.

[43]Teacher Tenure Laws: National Education Association Research Bulletin, vol.38, no. 3. October, 1960, p. 83.

not have to serve another probationary period on moving from one district to another.

The investigator is therefore forced to the conclusion that, whatever may be the justice of the nontransferable probationary period of the Alberta Act, it is certainly in keeping with provisions in effect in Western Canada and the United States. Apparently those who have been charged with the responsibility of framing tenure legislation in this part of the world have been convinced that "it is virtually impossible to predict accurately what degree of success a new teacher will have in a particular position until he actually functions in it ....."[44] Evidence that the Board has adopted this view will be found in some of the cases to be discussed later in the study.

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[44]Elsbree and Reutter, op. cit., p. 206.

PART II: OPERATIONS OF THE BOARD OF REFERENCE

CHAPTER IV

HEARINGS UP TO 1933

In this chapter, an attempt is made to review the operations of the Board of Reference during the first eight years of its existence.

At the outset, it is necessary to give some explanation as to why this period is treated separately from the remainder of the Board's history. This is done in the paragraphs which follow.

I. STRUGGLE FOR TENURE IN THIRTIES

In Chapter III, some attention was given to the importance of the amendment of 1932, whereby the decisions of the Board were made binding upon both parties to a dispute. It was then pointed out that this amendment brought into the Alberta Act one of the essentials of tenure legislation demanded by the criteria accepted in Chapter I. Mention was also made of the delay in bringing this amendment into effect. This phase in the development of teacher tenure in Alberta is now given further consideration.

A mere reading of the amendments of the thirties gives the impression that this period was a critical one in the struggle for teacher security. The fact that the provisions relating to the Board of Reference were amended in six of the first eight years of the decade indicates that the functions of the Board were kept rather constantly before the eyes of the

Assembly. The impression of a battle between the A.T.A. and the A.S.T.A. is strongly reinforced by reading the records of these two organizations over the same period.

It would seem that the Legislature's decision of 1932 to give the Board power to enforce its rulings was not reached without difficulty. Those members who opposed the change, while not successful in their efforts to have it thrown out, did manage to have its application delayed. The last section of the amending Act provided that section 15 "shall come into force upon a day to be fixed by proclamation of the Lieutenant Governor in Council."[1] A careful scrutiny of the Alberta Gazette for the years 1932, 1933 and 1934 has convinced the investigator that the necessary proclamation was never made. As a result, the section remained inoperative until it was incorporated in the rewriting of 1934,[2] which came into effect on receiving assent on April 16 of that year.

In view of the above comments, it is not surprising to find the Board making the following statement: "The Board of Reference did not call witnesses on either side, being of the opinion that this would only cause unnecessary expense and would serve no good purpose unless both parties were willing to cooperate and abide by the decision of the Board."[3] Apparently, an unsuccessful attempt had been made to obtain the request of both parties that the Board act as a Board of Arbitration as provided in

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[1]S.A. 1932, c. 34.

[2]S.A. 1934, c. 30, s. 9.

[3]Report of Board to Minister, August 1, 1932.

subsection (5) of the 1926 legislation.

II. IMPORTANCE OF 1934

The reading of such reports makes very comprehensible the frustration with respect to the Board of Reference which permeates the records of the Alberta Teachers' Alliance for this period. This feeling is clearly expressed in the Brief Historic Record of the Alberta Teachers' Association written by the late John W. Barnett, its General Secretary-Treasurer from 1918 to 1946. In referring to the battle waged during the twenties and thirties for several principles, including teacher tenure, which his organization wished to see established in Alberta, Mr. Barnett says: "The fond hopes of the Alliance had been dissipated, though a somewhat better form of teacher contract had been issued by the Department, but no satisfactory appeal against dismissal had been provided although provision did exist for one year for a satisfactory Board of Reference."[4] The one year to which he refers must certainly have been 1934. It will be recalled that an amendment of 1935 practically crippled the newly strengthened Board by excluding from its jurisdiction terminations effective at the end of the school year. The Board's full powers were restored only when this limitation was struck out in 1937.

It can be stated that the Alberta legislature of the nineteen thirties presents an interesting picture of the struggle between the

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[4]The A.T.A. Handbook, published by the Alberta Teachers' Association, 1960, p. 18.

proponents and opponents of teacher tenure. Mr. Barnett sees the turning point coming in 1935, "with the advent of the new government ..... under the leadership of Premier W. Aberhart."[5] As pointed out above, however, an important victory had been achieved in the previous year.

The pessimism expressed by Mr. Barnett in the first of the above quotations is not difficult to understand. It might, indeed, be contended that, in the first eight years of its existence, the Board of Reference contributed little, if any, additional security for teachers beyond that which had been provided by section 153 of the School Ordinance of 1921. Under that section, the Commissioner and, later, the Minister did have the power to reverse the decision of the school board and to order the reinstatement of the teacher. Except with the prior consent of both parties, this power was not possessed by the Board of Reference until 1934. Until that time, as will be revealed in the examination of cases later in this chapter, the Board provided little more than an opportunity publicly to air grievances related to terminations of contract.

Enough has probably been said about the importance of 1934. It will, however, be remembered that this was also the year in which the Act was amended so as to set out the directions to be followed by the Board in coming to its decisions. It was, further, the year in which teacher and trustee representatives were dropped from the Board's personnel. For

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[5] Ibid.

all these reasons, but especially because of the essential change made in the Board's powers, it is felt that this year was definitely a turning point in the history of the Board's operations, and that the decision to treat separately the periods preceding and following this crisis is justified.

III. DATA FOR SURVEY

Two weaknesses of the survey to follow, both proceeding from the nature of the data, must be pointed out.

In the first place, the number of cases to be considered is very small; a total of thirteen, all occurring in 1930 and 1932. Efforts to find records of hearings conducted in other years between 1926 and 1934 have been fruitless. One case, resulting from a termination of contract in 1931, has been discovered, but possibly because of the existing limitations on the Board's powers, it went direct to the Supreme Court of Alberta. Aside from the brief reference to the Board of Conciliation mentioned in Chapter II, the Annual Reports of the Department of Education for these years are silent on the subject, and files related to the Board of Reference antedating 1930 have apparently been destroyed. The searches made in the offices of the Alberta Teachers' Association and the Alberta School Trustees' Association have been similarly non-productive.

In the second place, no formal classification of cases, such as that done in the next chapter, is attempted here. Very little basis for classification can be found. Aside from the single case discovered in which the

Board was, presumably, acting as a Board of Arbitration, it had no power to render decisions. While some guesses have been made at what decisions the Board might have given had it been authorized to do so, these are mere guesses and have no validity as a basis for classification. An attempt has been made to group cases according to the nature of the disputes involved, all of which were related to terminations of contract. In the absence of any statutory framework such as existed from 1934 on, however, the grounds for termination are difficult to discover, and the resultant grouping is quite loose.

The enforced brevity of the treatment of cases belonging to this period is not considered to be a serious defect in the study. In view of the Board's impotence, the hearings could not have any very significant effects on school operation. The treatment of the cases found will, at least, indicate the general nature of the disputes which were coming before the Board at this time, and throw some light on the procedures which the Board, largely on its own initiative, was following in conducting its investigations.

IV. PERSONNEL AND OPERATIONS OF THE BOARD

Mention has been made of the fact that 1934 brought the change in the membership of the Board resulting in the arrangement which has persisted to the present. Throughout the period now under consideration, however, the Board, in accordance with the provisions of 1921 and 1926, consisted of three members, "one member to represent the school trustees of the Province, one to represent the school teachers of the Province,

and a third member who shall be neither trustee nor teacher, and who shall act as chairman of the Board."[6] Minutes of the meetings of the Executive of the Alberta Teachers' Alliance held during these years indicate that the teacher member was regularly nominated by that body and that he was usually, but not always, the General Secretary-Treasurer. While he has not found proof in the records, the investigator assumes that the trustee representative was similarly nominated by the executive of the Alberta School Trustees' Association. The Chairman, at least in 1930 and 1932, was a judge of the District Court.

The Board's reports to the Minister, signed by all three members, are quite detailed. In fact, these reports are considerably longer than most of those submitted in more recent years.

V. CLASSIFICATION OF CASES

Records of eleven hearings conducted in 1930 have been found. In view of a summary made by the Minister,[7] it seems safe to conclude that this was the total number of cases for that year. No similar assurance is felt with respect to 1932, for which records of two cases only have been found.

The lack of any statutory limitations on effective dates for either terminations of contract or applications for investigation by the Board is reflected in the dates on which applications were received. In 1930, these range from July 4 to December 10. Had the Board possessed the power to

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[6]S.A. 1926, c. 57, s. 5.

[7]Letter from Minister to A.S.T.A., February 17, 1931.

make binding decisions, the effects of these on continuity of school operation would certainly have been drastic.

As already indicated, the causes of the disputes are not always clearly stated in the Board's reports. The following categorization is offered with considerable reservation.

Disagreement with respect to salary appears in two of the thirteen cases investigated. In two more cases, general dissatisfaction related to teaching ability and discipline is voiced. Other causes appearing once each are the following: the teacher's lack of interest in extra-curricular activities; unauthorized absence; the school board's inability to secure from the teacher a commitment to return in the following term; misunderstanding concerning the duration of a contract. The desire of the school board to obtain a teacher with better qualifications is alleged only once, as is the inefficiency of the present teacher. In three cases, it has been impossible to determine the precise causes of the dispute.

Estimates of what might have been the nature of decisions, had the Board been rendering them, are, of course, purely subjective. The investigator gives it as his opinion, based on his reading of the reports, that four of the thirteen decisions would have been in favour of the teacher and four against. He feels incapable of hazarding even a guess in four of the cases. In the one case in which the Board was sitting as a board of arbitration, the decision was against the teacher and recommended that she be replaced "at New Year."

VI. CASES OF SPECIAL INTEREST

A few cases of special interest are now considered in some detail. The first of these is the only one found in which the Board acted as a board of arbitration and, consequently, rendered a decision binding on both parties. This will be identified as Case 6 of 1930. For this and the other cases discussed in this chapter, the source of information is the reports written by the Board to the Minister of Education. Before proceeding with this case, however, it is necessary to say something of the form of contract then in effect.

It is impossible to read the records of this period without being struck by the significance of clause 6 of the teacher's contract. This was the clause which required the school board to provide the teacher with an opportunity "to hear and discuss its reasons for proposing to terminate the agreement" prior to issuing the notice of termination. It is mentioned in almost every case of 1930, usually in connection with failure on the part of the school board to observe this requirement. Teachers were certainly very aware of its importance and very insistent on the rights which it conveyed. It is undoubtedly the explanation of the reference to the "somewhat better form of teacher contract" made by the Secretary of the A.T.A. in the quotation used earlier in this chapter.[8] It is difficult to avoid the impression that teachers regarded it as being, within the tenure provisions of that time, at least as significant as the Board of Reference itself.

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[8]A. T. A. Handbook, 1960, p. 18.

In the light of the criteria accepted for this study, the Alberta teachers of the late twenties and early thirties were fully justified in the significance which they attached to Clause 6 of their contract. When the legislation which brought in the continuous contract[9] made the earlier form obsolete, the requirement stated in criterion number 4 in Chapter I was lost. The study will return to the desirability of the renewed recognition of this requirement in the tenure legislation of Alberta.

Case 6 of 1930. The dates related to this case are of interest because of their indication of the amount of time involved. The Board's report shows that the dispute received considerable attention at the annual meeting of the ratepayers held on January 4. Presumably it had existed for some time previously. The teacher's application for investigation by the Board was received on August 19, and the Board's decision was handed down on November 30.

At the annual meeting mentioned above, a resolution was passed calling on the school board to dismiss Mrs..... "as she is not satisfactory." The board took no overt action on this resolution until its special meeting of May 27, at which a resolution was passed "that the written five days notice be given Mrs.... that she attend to (sic) the school board meeting on May 31 at 2:P.M. at Secretary's office in the matter of terminating her agreement with the school board."[10] As pointed out above, the written notice referred to in this resolution was required by the contract then in use as a preliminary to notice of termination by

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[9]S.A. 1931, c. 32, s. 156.

[10]Report of Board to Minister, November 12, 1930.

the employing board.

At the meeting of May 31, the following complaints were read to Mrs.....

> (1) That Mrs....'s children who are under school age are with her and they are interfering in the school when class is in operation;
>
> (2) That she is (sic) not kept open school full time as prescribed by the School Act, and many times late in school coming from Smoky Lake;
>
> (3) That she do (sic) not stay in the Teacher's house by the school, but drive every day to Smoky Lake five miles distance, which causes delays."[11]

The Board's quotation from the minutes of this meeting concludes by indicating that Mrs..... admitted irregularities and promised to correct them. On receiving this assurance, the school board decided to retain her services.

This decision was, however, apparently given further consideration during June, because on July 2 the board instructed its secretary to request Mrs..... to attend a meeting on July 8, in order to hear the board's proposal that she accept the junior room. The board's letter indicated its intention to engage a teacher holding a first class certificate for the senior room.

No meeting was held on July 8, the teacher having notified the secretary of her refusal, either to attend the meeting or to accept responsibility for the junior room. On August 4, the board again complied with the requirements of the contract by inviting Mrs..... to attend a meeting on August 11. The minutes of this meeting indicate

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[11] Ibid.

that the same list of complaints was read to the teacher in the presence of all the trustees, and that a resolution to give her thirty days' notice of termination of contract was carried.

Presumably the school board was notified of the teacher's application shortly after its receipt by the Board of Reference. On August 25, the trustees decided to refer the case to a Board of Arbitration. The Board's report, while not recording the teacher's agreement, implies that this was received.

On September 9, the Chairman of the school board wrote to the Board of Reference, strongly supporting the teacher. To validate his claim to speak with authority on the matter, the Chairman states that, "For the last two years as Chairman of the Board, I visited the school at least once every week."[12] He continues by saying that he has never noticed any irregularity in the school's operations and that he has received no complaints from ratepayers. He mentions the fact that all the pupils had passed the Grade VIII departmental examinations in that year. He concludes by attributing the trouble to religious and political prejudice.

The finding of the Board is quoted below:

> In summarizing the facts presented to us, we find,- the evidence is contradictory. It is admitted by the Chairman and also in the statement received from the Secretary that religious and political questions are involved. These appear to have influenced or divided the residents of the district, and we believe are, to a large extent, responsible for this application.
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> The Trustees are not in agreement. The views of the Chairman - who strongly supports the Teacher - are in direct opposition to those of the other two members of the Board. The question at issue has been under discussion as shown by the minutes, since the annual meeting held January 4.

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[12] Ibid.

The numerous complaints cover a lengthy period. We have only been influenced by the reasons for dismissal discussed with the teacher at the meetings held on May 31 and August 11.

A mother of young children is not, in our opinion, a proper person to be in charge of a schoolroom. In any case, she should have provided proper supervision for them and not used the school as a nursery. There is little likelihood of any amicable settlement under the circumstances, and we consider a change of teachers would be in the best educational interests of the District.

We are also agreed that Mrs..... should be allowed to finish the present term.

A new teacher - preferably one holding a first-class certificate as mentioned in the minutes - should be appointed for the senior room to commence duties at the opening of the New Year."[13]

This case is considered to be of interest for the following reasons:

(1) The absence from the Board's report of any reference to formal hearings conducted by it. In this respect, the investigation seems to be typical of those conducted during this period.

(2) The scrupulous care taken by the school board to comply with all the statutory requirements related to termination of contract, both those in the Act and those in the contract itself. In this respect, as will become clearer in the next chapter, the case is certainly not typical of school board action in the thirties.

(3) The indications of sharp division of opinion within the community.

(4) The lack of any reference to the teacher's efficiency, or to any inspectors' reports which might bear thereon.

(5) The striking contrast between the attitude of the school board

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[13] Ibid.

towards the teacher's driving five miles to and from work, on the one hand, and the present acceptance of the common practice of teachers commuting over much greater distances, on the other. Nevertheless, the fact that reference to this matter appears in the present School Act[14] indicates that it is still regarded as a potential source of friction in teacher - board relations.

Case 8 of 1930. Case 8 of 1930 has been selected for discussion because it involved a termination of contract by an official trustee appointed by the Minister to administer the affairs of the school district. As in a similar situation today, this official had all the powers and duties of an elected school board.

The Board's report makes it clear that there was a great deal of confusion in the arrangements for the meeting required by the teacher's contract. The notice of this meeting gave its date as June 28, but failed to specify the place at which it was to be held. The teacher, in his acknowledgment of the notice, stated his assumption that it would be held at his school, whereupon he received a further communication advising him that the meeting would take place at the Official Trustee's Office, some ten miles from the school. The meeting finally took place on the street, where reasons for the proposed dismissal were stated by the Official Trustee as follows: "I desired a younger teacher who would take greater interest in the social and recreative activities of the

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[14]R.S.A. 1955, c. 297, s. 363a.

District."[15]

Apparently the Official Trustee felt some misgivings about the legality of the above meeting. His declaration continues:

> For the purpose of avoiding any misunderstanding I instructed the Secretary to give Mr..... a further notice of a Board meeting to be held July 12. The teacher apparently considered this meeting superfluous and did not attend, consequently a 30-day notice of termination of contract was sent to him on July 12.[16]

In its report, the Board severely criticized the Official Trustee, both for his handling of the arrangements for the meeting, and for his reasons for dismissing the teacher. The following findings quoted from the report indicate the Board's views on these matters:

> (1) That the Official Trustee acted in an unreasonable and arbitrary manner in holding the meeting at such a distance from the school, and we agree that any investigation should have been held either at the school or some other suitable place within the District;[17]
>
> (2) That the only reason given for dismissal was, in our opinion inadequate. While we agree, it may be commendable on the part of the teacher, so far as we are aware, there is nothing in the Act, to compel him to take an active interest in the social and recreational activities of the community.[18]

This criticism of the Official Trustee indicates that the Board of this period had no hesitation in forming and expressing opinions at variance with those of an appointee of the Minister. If it lacked the power to make binding decisions, it at least possessed the important quality of political disinterestedness.

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[15]Statutory Declaration of Official Trustee quoted in Report of Board to Minister, November 24, 1930.

[16]*Ibid*.

[17]Report of Board to Minister, November 24, 1930.

[18]*Ibid*.

It seems clear that, had it possessed the power to do so, the Board would have reinstated the teacher. This sort of case explains and justifies the deep dissatisfaction of the Alberta Teachers' Alliance with the existing tenure legislation to which reference has been made earlier in this chapter.

The report again leaves the impression that the Board conducted no formal hearing. The reference to communications received from the teacher and the Official Trustee suggest that the investigation was conducted by way of correspondence.

Case 9 of 1930. Case 9 of 1930 provides an interesting illustration of the part played in school administration by local pressure groups. The fact that the pressure, in this instance, was exerted unsuccessfully on behalf of the teacher is incidental. Very often it was directed with consumate success against the teacher. The case also illustrates the ignorance of statutory requirements on the part of school boards which was so prevalent at this time.

The first notice of termination received by the teacher was undoubtedly illegal. In the first place, it failed to provide the thirty days' notice required by the Act; furthermore, it preceded any notice of the meeting required by the contract. Only after the teacher had protested the illegality of the school board's procedure, was she invited to attend a meeting to hear the trustees' reasons for proposing to terminate the contract. Unfortunately, beyond suggesting that they were related to the teacher's methods, the Board's report gives no indication as to what these reasons were.

Following this meeting, the teacher received further notice of

termination, but this one gave no effective date. As a matter of fact, the school board's minutes fail to record any resolution to terminate the contract.

The activities outlined above had all taken place during the month of June. On August 9, a meeting of ratepayers was held to discuss the actions of the school board. This meeting passed resolutions requiring the trustees to apologize to the teacher and asking the Department of Education to appoint an official trustee and to allow Mrs..... to continue as teacher.

Immediately after this meeting, the chairman and secretary of the district visited the Department to seek advice as to their further action. Apparently they were informed concerning the essentials of a legal termination of contract, because the teacher shortly thereafter received a properly drawn notice of termination. Even then, however, the Board's report indicates that the school board erred, since no record could be found of any meeting between July 29 and September 10.

In their representations to the Board, the trustees stated that the ratepayers' meeting had been called and controlled by the teacher's husband and other close relatives. They claimed that many ratepayers had ignored the meeting, and that those who attended had been deceived by false statements.

On this case, the Board summed up its views as follows:

> After careful consideration of the evidence submitted to us we find:
>
> That the criticism of the teacher's methods by the Trustees was, to a large extent, justified. It is possible, however, that under more favourable circumstances, matters might have been amicably adjusted by a frank discussion between the two parties.

> That the ratepayers' meeting was dominated by the ..... families, for all resolutions, with one exception were moved and seconded by them. For this reason, we cannot accept this meeting as expressing the views of the ratepayers.
>
> We therefore believe that the Trustees acted in the best interests of the District, and were consequently justified in their action.[19]

The investigator feels that the Board's findings are not completely convincing. It is, of course, possible that strong evidence was adduced of the unsatisfactory nature of the teacher's methods, but no such evidence, in the form of inspectors' reports or otherwise, is recorded in the report. Furthermore, the legality of the school board's procedures in terminating the contract, which would seem to have been very questionable, is not even mentioned in the summing-up. It is interesting to speculate on the outcome had the teacher decided to carry her case to a court of law. In any event, as will be pointed out in the next chapter, the Board of Reference, once it had acquired the power to make binding decisions, ruled with almost perfect consistency against school boards who had failed strictly to comply with the statutory requirements.

Further cases might be used to illustrate other facets of teacher-board relations at this time; at least one other provides grounds for suspecting the unwarranted dismissal of a teacher. It is felt, however, that the three cases treated above are indicative of the teacher tenure situation in the early thirties, and of the reasonableness of the demands of the Alberta Teachers' Alliance for a Board of Reference with power to enforce its decisions.

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[19]Report of Board to Minister, December 7, 1930.

VII. BOARD'S PROCEDURES

As a conclusion to this chapter, three characteristics of the Board's procedures at this point in its history deserve some comment.

In the first place, the records indicate that the procedures were quite slow-moving. In 1930, a period of at least four months elapsed between the filing of an application and the completion of the investigation. It is true that the records indicate that some of this delay may have been due to the Chairman's illness,[20] and, in support of this explanation, matters do seem to have proceeded more expeditiously in 1932. Whatever the reasons, the situation must have been very unsatisfactory to both teachers and school boards and, had binding decisions been forthcoming, would have been intolerable.

In the second place, as already suggested, the Board's proceedings seem to have had very little formality. There are no records of formal hearings, with the names of witnesses listed. Evidence was apparently gathered by way of interviews and quite frequently, through correspondence. In spite of the presence of a judge on the Board, the records do not give the impression of a court of law. References to legal counsel are completely lacking. In this respect, the procedures of the Board at this time are far removed from the ideals set by the authorities mentioned in Chapter I.

Finally, to judge from its own records, the Board was making very little use of the reports of school inspectors. In the thirteen cases read,

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[20]Letter from Minister to A.S.T.A., February 17, 1931.

only two references to such reports have been found. In one of these, mention is made of two favourable reports received by the teacher; in the other, the lack of any report for the preceding two years is recorded. The study will show that inspectors' reports have not become a factor of much greater importance in the more recent operations of the Board.

From the survey in this Chapter, it will be apparent that, up to and including 1933, the Board of Reference was a tenure commission in name only. Aside from the rare occasions on which it acted as a board of arbitration, its contribution to teacher tenure was very limited. It may have had some effect through its revelations of inequities, but it was able to do very little to correct them. The rest of the investigation, however, is concerned with a body which, while continuing to bear the same name, was very different in powers and procedures. In the succeeding chapters, the investigator hopes to show that this body, by virtue of the important statutory provisions which became effective in 1934, has unquestionably exercised some very real influence on teaching tenure and, therefore, upon school operation in Alberta.

CHAPTER V

ANALYSIS OF HEARINGS, 1934-1960

In this chapter, an attempt is made to analyze the cases which have come before the Board since 1933 and the decisions made upon them. The annual distribution of applications, withdrawals, hearings and decisions is first examined in Table I. Following a discussion of the figures gathered in this table, the study proceeds, by means of Table II, to analyze the bases on which the decisions have been made. Here the directions set out in the statute are followed as closely as possible, but it has not been possible to bring all the cases studied within this framework. The failure to do so results in a section devoted to other grounds for termination of contracts which have been advanced at Board hearings. Before considering these, however, an attempt is made to attach some significance to the distribution of decisions in favour of and against the teacher. A further section is devoted to an examination of the part played by reports of school inspectors and their influence upon decisions handed down by the Board. Some attention is also given in this section to the views expressed by the Board and officials of the Department concerning the attendance of school inspectors at hearings.

I. ANNUAL DISTRIBUTION OF APPLICATIONS, WITHDRAWALS, HEARINGS AND DECISIONS

A few introductory remarks are required with respect to Table I.

The non-appearance of applications in 1935 and 1936, immediately following the heavy count in 1934, is, at first sight, surprising. The investigator feels, however, that the explanation is to be found in the amendment of 1935[1] discussed in Chapter III. It will be recalled that this amendment, which was struck out in 1937,[2] forbade any reference to the Board based on a termination of contract effective in the month of July. Presumably this amendment, coupled with the provision in effect since 1931[3] requiring terminations effective in other months to be approved by an inspector of schools, had the effect of shutting off appeals to the Board in 1935 and 1936. The numbers of applications in 1934 and 1937, thirty-nine and sixty-one respectively, serve to emphasize the effects of the 1935 amendment and of its deletion in 1937.

Table I is now presented.

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[1]S.A. 1935, c. 44, s. 8.

[2]S.A. 1937, c. 43, s. 8.

[3]S.A. 1931, c. 32, s. 157.

TABLE I

ANNUAL DISTRIBUTION OF APPLICATIONS, WITHDRAWALS, HEARINGS AND DECISIONS
1934 - 1960

Year	Number of Applications	Number of Withdrawals	Number of Hearings	Number of Decisions For school board	Number of Decisions For teacher
1934	39	1	38	16	22
1935	0	0	0	0	0
1936	0	0	0	0	0
1937	61	1	60	17	43
1938	23	0	23	4	19
1939	17	8	9	3	6
1940	6	0	6	1	5
1941	4	0	4	1	3
1942	1	0	1	0	1
1943	4	0	4	0	4
1944	0	0	0	0	0
1945	0	0	0	0	0
1946	0	0	0	0	0
1947	11	5	6	3	3
1948	7	5	2	1	1
1949	3	2	1	1	0
1950	2	2	0	0	0
1951	3	2	1	1	0
1952	7	4	3	0	3
1953	5	0	5	3	2
1954	4	4	0	0	0
1955	8	6	2	2	0
1956	3	3	0	0	0
1957	2	2	0	0	0
1958	3	2	1	1	0
1959	2	2	0	0	0
1960	0	0	0	0	0
Totals	215	49	166	54	112

NOTE:

The data for this table have been drawn from the reports on the operations of the Board contained in the files of the Department of Education.

The discussion of the data shown in Table I will follow the columns from left to right.

Applications. The applications show a marked peak of sixty-one in 1937, followed by a rather steady decline during the next ten years. The small incidence of applications during the years of World War II (total of fifteen from 1940 to 1945 inclusive) would seem to be significant, reflecting possibly the difficulty school boards were experiencing during these years in finding teachers for their schools. The post-war years show some resurgence of activity, 1947 and 1948 producing eighteen applications. During the fifties, there was a steady but limited flow, diminishing to two or three applications for each of the closing years of this decade.

One must certainly conclude that the dependence of teachers upon the Board has declined in the past fifteen years. As a matter of fact, over seventy-two per cent of the applications recorded were made during the first ten of the twenty-seven years covered by the table. When it is realized that the number of teachers in Alberta increased from 5,912 in 1934 to 11,789 in 1960,[4] the very significant decrease in the incidence of applications becomes apparent.

It has been pointed out that the legislation permits either party to a dispute concerning termination of contract to make application for a hearing by the Board. As might be expected, however, the number of applications by school boards has been very small, three only being recorded. These applications were prompted by the desire of school

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[4]Annual Reports of Department, 1934, p. 101 and 1960, p. 240.

boards to enforce contracts which they felt teachers had unlawfully terminated. Strangely enough, all three cases occurred in 1939; only one of the decisions rendered was in favour of the school board.

Withdrawals. Turning to withdrawals, a few cases have been difficult to classify. For example, in 1952 one of the teacher applicants submitted his resignation to the school board after his appeal had been heard. In view of his action, the Board decided that there was no need to make any findings. The case has been counted as a withdrawal.

It is noticeable that, up to 1954, the year in which the statute was amended to provide for withdrawals,[5] the number of these was quite small (thirty out of one hundred ninety-three applications, or 15.5%). As might be expected, following the amendment the incidence of withdrawals increased sharply (nineteen out of twenty-two applications, or 86.4%). This part of the legislation has certainly been utilized, and has apparently met a real need. It is, however, interesting to note that, to some degree at least, the amendment is an example of legislation following practice. "Out of court" settlements of various kinds had been occurring prior to 1954, sometimes taking the form of a withdrawal of the termination of notice by the school board, sometimes resulting from the decision of the teacher to resign. While there was no legal recognition of these "withdrawals," the Department raised no objections to such procedures, and finally decided that their frequency indicated a

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[5]S.A. 1954, c. 94, s. 46.

need for the amendment. It would seem that this decision was justified, although, as pointed out in Chapter III, there may be grounds for thinking that the legislation should attach some conditions to withdrawals.

It is also interesting to note that, in each of five years (1950, 1954, 1956, 1957 and 1959), all of the applications made were withdrawn. This trend reflects the increasingly vigorous efforts of the Teachers' and Trustees' Associations to effect "out of court" settlements, and the increasingly frequent success of these efforts.

Hearings. Since the number of hearings in any year is derived immediately from the numbers of applications and withdrawals, this column calls for little further comment. Out of the total of one hundred sixty-six hearings recorded, one hundred forty-five, or 87.4%, occurred prior to 1944, that is during the first ten of the twenty-seven years under review. In contrast, during the last decade, it has been necessary to conduct only twelve hearings. The need for a Board of Reference, measured in terms of its activity, has diminished to the vanishing point.

The annual distribution of applications and hearings is illustrated in Figure 1, page 84.

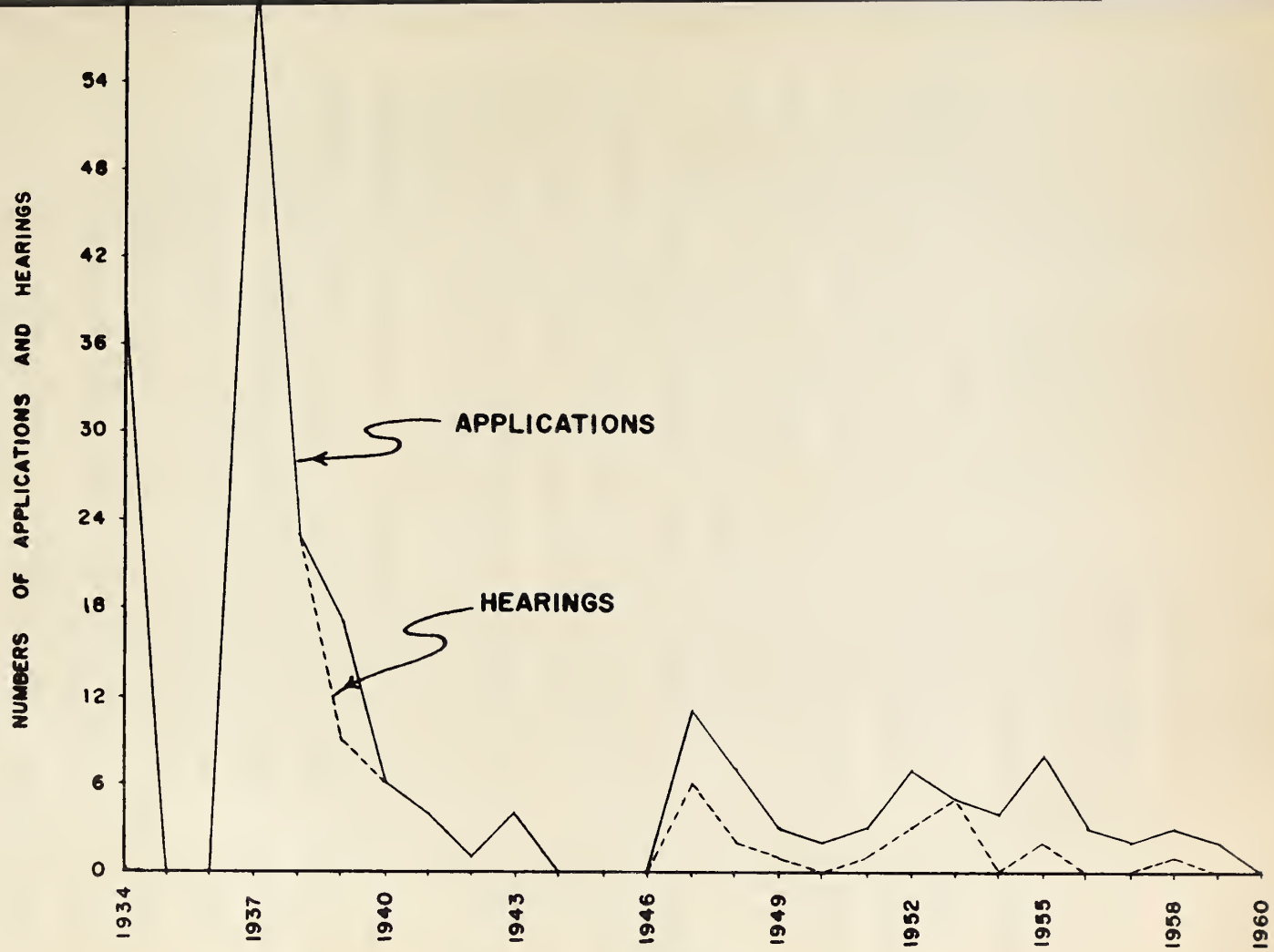

FIGURE I

ANNUAL DISTRIBUTION OF APPLICATIONS AND HEARINGS, 1934 — 1960

Decisions. The columns giving the breakdown of decisions reveal that a substantial majority of these (one hundred twelve out of one hundred sixty-six, or 67.5%) have been in favour of the teacher. The figures indicate, however, that the percentage of decisions favourable to the teacher has dropped in the latter part of the period studied, the change beginning to manifest itself in the mid-forties. Until 1944, one hundred three of the one hundred forty-five decisions rendered, or 71.0%, had required reinstatement of the teacher. Since that year, only nine of the twenty-one decisions have been of this type. The trend towards supporting school board action becomes quite marked in recent years. School Boards have won seven, or 58.3%, of the twelve cases in the fifties, including all three of those heard since 1954.

While the very small number of cases renders the drawing of conclusions hazardous, it is interesting to speculate on the causes of the trend just discussed. It may indicate that school boards have become more circumspect in the matter of terminating teachers' contracts; that the amount of investigation into complaints received from various sources concerning the behavior and performance of teachers has perhaps increased; that superintendents may be exercising an influence towards justice tempered by caution. Possibly the heavy incidence of adverse decisions in the early years of the Board's operations has, in itself, induced school boards to look more searchingly into the grounds for termination. As a result of these and, possibly, other influences, it is clear that school boards have recently been better prepared to defend before the Board the reasonableness of their actions than they were in earlier years. The accuracy of these

speculations might well be a valid subject for further investigation.

II. ANALYSIS OF GROUNDS FOR DECISIONS

Classification of Decisions. The purpose of this section is to give an analysis of the grounds on which the decisions of the Board have been made. In preparing Table II, in which the analysis is presented, the investigator has endeavored to restrict himself to the four classes of reasons set out in subsection (3) of section 355 of the School Act. As pointed out in Chapter III, this subsection has, since 1934, constituted the directions given by the Legislature to the Board as the basis for its decisions. The attempt to fit the reasons stated by the Board within this framework has encountered the two difficulties discussed below.

1. In the first place, the reasons for the Board's decisions are not always clearly stated in the records. The statutory provisions under which the Board was set up would seem to assure a source of this information. The establishing legislation of 1926 required the application for a hearing to be "accompanied by a full and complete statement of the nature of the complaint or dispute .....",[6] and this requirement has been carried forward into the present provisions. As pointed out in Chapter III, however, this important requirement, perfectly consonant with the criteria, has, in practice, been almost completely disregarded. No formal application form appears in the

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[6]S.A. 1926, c. 57, s. 5.

records of the Department of Education until 1947, when a very satisfactory form provided by the Alberta Teachers' Association came into use.[7] Prior to this time, the records of procedures preliminary to hearings throw very little light on reasons given by school boards for terminating contracts. Letters from teachers to the Registrar requesting hearings merely state that the contract has been terminated. One might have expected that, when the Alberta Teachers' Association form, with its section providing for the statement required by the statute, made its appearance, this serious defect in the application of the legislation would have been remedied. Such, however, has not been the case. The great majority of application forms completed since 1946 merely state, in this section, that the reasons for the school board's actions are unknown to the teacher. In a relatively small number of applications, the notice of termination is quoted, but this, almost without exception, is merely a notice, without reasons.

It would seem that, unless the School Act requires a school board to give reasons for its termination of a teacher's contract, such reasons are very rarely going to be given prior to a hearing by the Board of Reference. Except in the contract form in use in the late twenties and early thirties, no such requirement has ever existed in the Act. In this respect, the Alberta legislation governing termination of contracts fails completely to satisfy the criteria set out in Chapter I, and the effort to do so in the sections concerned with the Board of Reference merely serves to reveal a serious inconsistency.

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[7]See Appendix.

In view of his almost complete failure to discover the grounds alleged for termination in the applications for hearings, the investigator was forced to turn for this information to the reports written by the Board itself. Both the Board of Conciliation and the Board of Reference, as originally constituted, were required to report their findings to the Minister. While this requirement has not appeared in the statute since the rewriting of 1952, the Board has continued the practice of submitting reports to the Minister. It is from these reports that the data in Table II have, largely, been drawn. There has, however, been no uniformity with respect to the length or contents of the Board's reports. They have varied in length from one or two sentences to several pages, from a mere statement of the decisions to a detailed enumeration of the reasons therefor. Cases in which no explicit statement of the reasons for the decision rendered has been found have been recorded in the column headed "Not Discovered" in Table II. It will be noted that twenty-one of the one hundred sixty-six cases investigated fall into this category, all except one of them occurring prior to 1942. This distribution indicates that this difficulty was most acute with respect to the investigation of the early years of the Board's operations. During the last twenty years, the reports have become fuller and more explicit.

2. In the second place, in a considerable number of hearings, school boards have alleged and the Board has given some consideration to reasons for termination of contract which do not seem to fit readily into any of the categories enumerated in the subsection. Examples of

such reasons are the following:

(a) the desire of the school board to replace a female by a male teacher;

(b) the teacher's operation of a farm;

(c) the teacher's attitude towards Christmas concerts.

In eighteen cases it has been felt that such a reason was the main one advanced by the school board and used by the Board as the basis for its decision. These cases have, therefore, been recorded in the column headed "Other Grounds." An attempt to categorize such grounds is made in Table IV, later in this chapter.

Following these explanatory remarks, Table II is now presented.

TABLE II

ANALYSIS OF GROUNDS FOR DECISIONS

Year	Statutory Non Compliance		(1)		(2)		(3)		(4)		Other grounds		Not Discovered	
	A	F	A	F	A	F	A	F	A	F	A	F	A	F
1934	2	6	1	8	0	0	6	5	3	0	0	0	4	3
1937	1	14	5	14	1	3	0	1	8	0	1	4	1	7
1938	0	11	0	3	0	1	0	0	3	0	1	4	0	0
1939	1	4	1	0	0	0	0	0	1	0	0	0	0	2
1940	0	0	1	1	0	0	0	1	0	2	0	1	0	0
1941	0	0	0	0	0	0	0	0	1	0	0	0	0	3
1942	0	1	0	0	0	0	0	0	0	0	0	0	0	0
1943	0	2	0	0	0	0	0	0	0	0	0	2	0	0
1947	0	0	0	1	1	1	0	0	2	0	0	1	0	0
1948	0	1	0	0	0	0	0	0	1	0	0	0	0	0
1949	0	0	0	0	0	0	0	0	1	0	0	0	0	0
1951	0	0	1	0	0	0	0	0	0	0	0	0	0	0
1952	0	0	0	1	0	0	0	0	0	0	0	2	0	0
1953	3	0	0	0	0	0	0	0	0	0	0	1	0	1
1955	0	0	1	0	0	0	0	0	0	0	1	0	0	0
1958	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Totals	7	39	10	28	2	5	6	7	21	2	3	15	5	16
	46		38		7		13		23		18		21	

NOTES: (a) A indicates decision against teacher; F decision in favour of teacher.
(b) The grounds for decisions counted in columns headed (1), (2), (3) and (4) are those set out in the correspondingly numbered clauses of section 355 (3) (b) of the School Act. viz.

(1) the misconduct or inefficiency of the teacher;
(2) anything in the mode of life, character or disposition of the teacher of a nature calculated to make the retention of the teacher detrimental to the proper and efficient conduct of the school;
(3) the financial necessities or circumstances of the district;
(4) the termination of the contract is conducive to the general welfare of the district and the betterment of the educational facilities therein.

The relative frequencies with which the several grounds have been used by the Board in reaching its decisions are shown in Figure 2, page 92. The percentages of cases decided for and against teachers on each of these grounds and on all grounds are represented in Figure 3, page 93. These figures are intended to illustrate the data set out in Table II, on page 90.

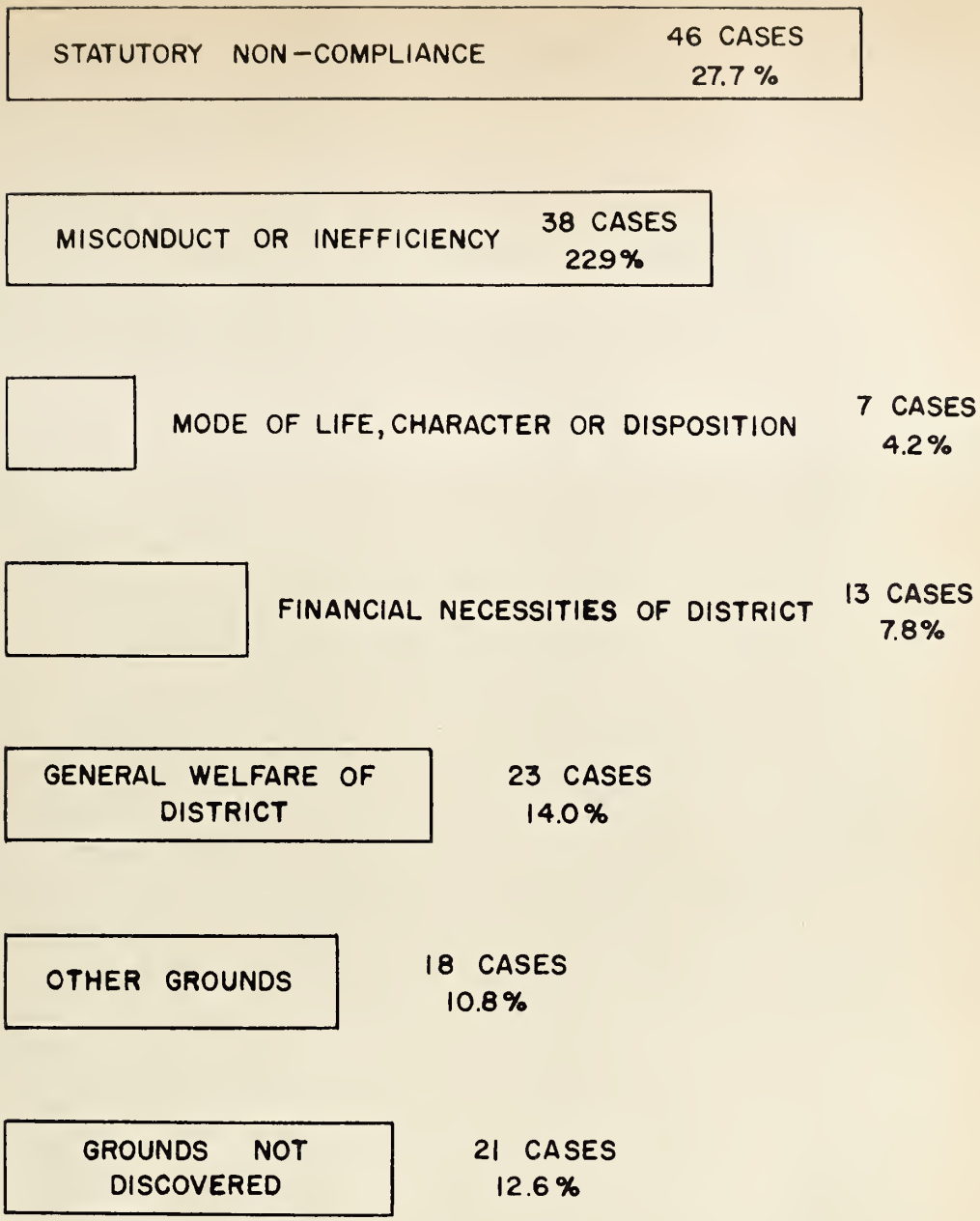

FIGURE 2

RELATIVE FREQUENCIES OF GROUNDS FOR DECISIONS 1934 — 1960

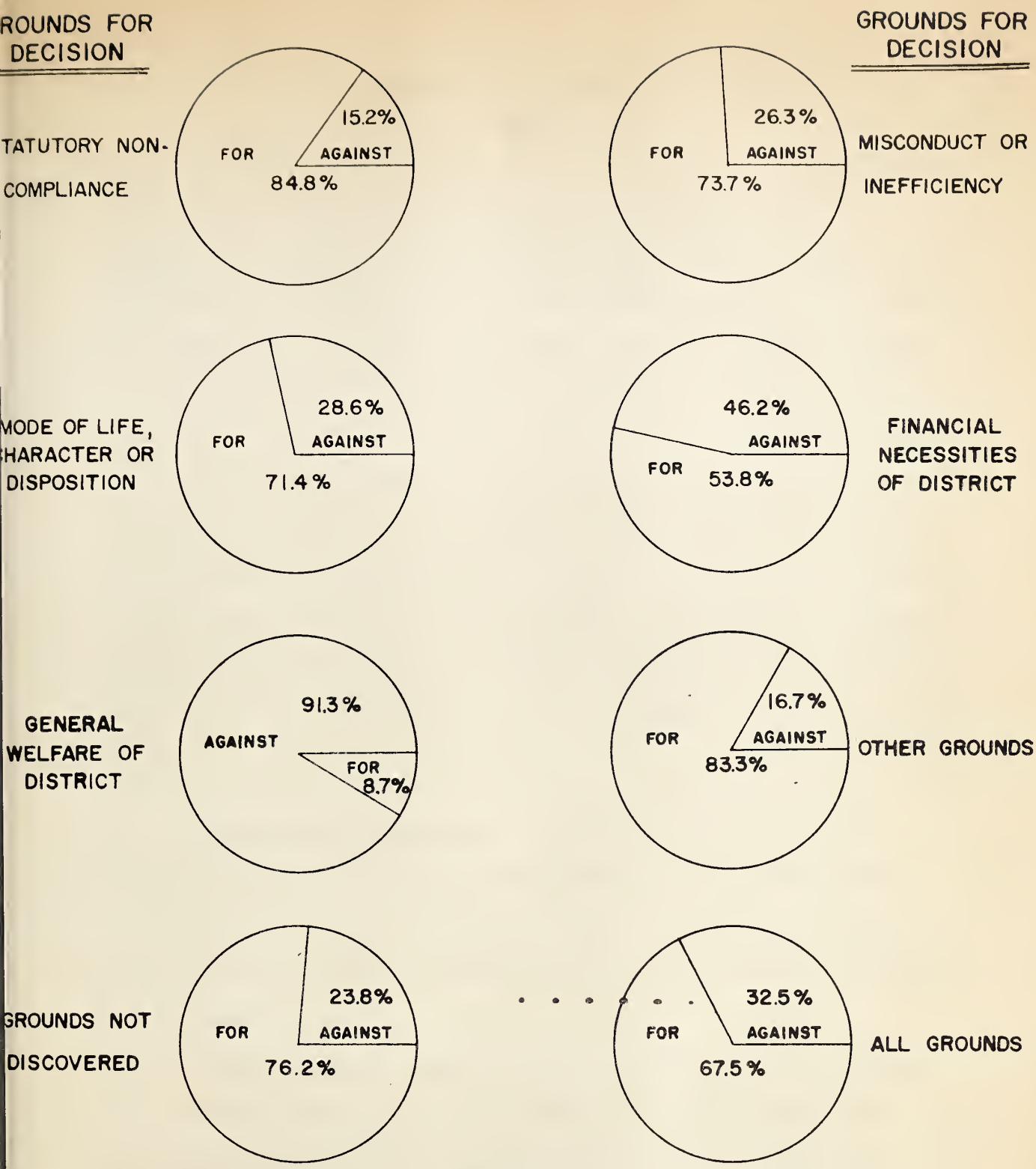

FIGURE 3

PERCENTAGES OF DECISIONS FOR AND AGAINST TEACHERS

III. DISCUSSION OF GROUNDS FOR DECISIONS

The next section of this chapter is devoted to an elaboration of the data set out in Table II, page 92. The major purpose of this portion of the study is to discover what significance, if any, can be attached to the relative frequency with which decisions for and against the teacher have been made on the several grounds recorded. Where it has been considered helpful to do so, reference is made to a specific case, but most references of this type are reserved for a later chapter.

Almost exactly half of the decisions rendered fall into two of the seven categories listed in Table II. "Statutory Non-Compliance" and "Misconduct or Inefficiency" account for 50.6% of the decisions. In the first of these are found forty-six, or 27.7% of the decisions; in the second, thirty-eight, or 22.9%. Because of the frequency with which these two types of decision have occurred, they will be considered first.

Statutory Non-Compliance. The provisions of the Act most frequently invoked under this heading have been those governing the calling of school board meetings, the dates for delivery of notices of termination, and the dates for the filing of applications for hearings by the Board.

School boards have failed to meet these statutory requirements far more often than have teachers. Thirty-nine of the forty-six decisions under this heading, i.e., 84.8%, have been recorded against them. Two conclusions seem warranted:

(1) That, over the period covered, teachers have been far more

observant of the requirements of the Act than have school boards;

(2) That, with a few exceptions to be discussed later in the study, the Board has consistently held that the provisions governing termination of teachers' contracts must be rigidly enforced. These provisions, therefore, are correctly to be regarded as an essential part of the tenure legislation of Alberta.

The annual distribution of cases settled under this heading is of some interest. Thirty-nine of the forty-six cases in this category (84.8%) occurred before 1940. Furthermore, of the seven cases which have occurred since 1939, teachers have lost three. It would seem that most school boards had learned the lesson by the end of the thirties. The presence of Superintendents in the divisions as advisers to school boards may have contributed to this very desirable acquisition of legal knowledge on the part of trustees and their secretaries.

The records of the thirties produce ample evidence that the lack of this knowledge was common and, at times, had unfortunate consequences with respect to the efficiency of school operation. In its report on Case 11 of 1934, the Board states: "The Secretary who gave evidence before me did not seem to be aware of the provisions of section 113 of the Act.[8] The section in question was that which required the giving of two clear days' notice of a school board meeting. The Board recognized the fact that the trustees had all been present at the meeting at which the resolution to terminate the teacher's contract had been passed, and that, by their actions, they might be said to have tacitly

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[8]Report of Board to Minister, July 28, 1934.

waived the notice required by the Act. Nevertheless, it held that "the provisions of section 113 are mandatory, and not merely directory,"[9] and, for this reason, ordered the reinstatement of the teacher.

In this instance, apparently, no harm resulted from the Secretary's error. The Board coupled to its decision a statement that it was satisfied that the teacher was a good one, and that the complaints made against him were without foundation in fact. The results of school board ignorance or carelessness were not, however, always so felicitous. In Case 3 of 1938, the Board upheld the appeal of the teacher because of a similar non-compliance on the part of the school board. In its report, it felt impelled, in the light of the evidence brought before it, to write, "Had the meeting at which it was resolved to terminate the contract been properly called, I would have recommended that the action of the board be upheld."[10] The report went on to state the view that it would have been better for the school had the teacher resigned. This is an example of tenure legislation being perverted through ignorance of administrators, so that, instead of serving the purposes of the school, it impedes their attainment. It is not the only such example found in the records of the Board of Reference.

From the above treatment of decisions based on "Statutory Non-Compliance," it will be seen that, had the requirements of the Act been followed, the outcome might well have been different in a number of cases. The investigator cannot make any estimate of the extent to which the ratio of

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[9] Ibid.

[10] Report of Board to Minister, July 27, 1938.

decisions for and against teachers might thereby have been altered; remarks such as those quoted above, which might give some guidance in this direction, appear in relatively few reports. The fact that such a large portion of the cases has been settled on a basis having no direct relation to teacher performance constitutes a weakness in the application of our tenure legislation. The only cure for this defect is an increased familiarity with school law on the part of school boards and their officials. Happily, as pointed out above, there are signs that this cure has, to a considerable degree, been effected in Alberta.

Misconduct or Inefficiency. In contrast with the class of decisions just considered, the one to which attention is next given is pre-eminently that in which the emphasis has been on classroom procedures. The decisions made here might be regarded as those touching most closely the welfare of pupils and the professional reputations of teachers.

The figures in Table II indicate that teachers fared better in cases related to "Misconduct and Inefficiency" than in any others except "Statutory Non-Compliance." Twenty-eight of the thirty-eight decisions handed down, i.e., 73.7%, went in favour of the teacher. An effort has been made to isolate those cases in which "misconduct" was alleged, and a brief treatment of these cases is now given.

1. Misconduct. The effort has forced some rather arbitrary decisions. The word "misconduct" appears only two or three times as the basis of a decision. Acting on his belief that, as used in the statute, the word is meant to imply morally unacceptable behavior, the investigator interpreted such terms as "excessive drinking," "bad

language" and "fighting" as implying allegations of misconduct. He included in this category one case in which the teacher had been charged with tampering with examination papers.

When the above interpretation of "misconduct" has been applied, only six cases have been found in which the decisions seem to be based mainly on this consideration. Of these decisions, two were against the teacher, and four in favour.

2. Inefficiency. With these six cases extracted, the score under "inefficiency" stands as twenty-four out of thirty-two, or 75%, in favour of the teacher. While inefficiency has been one of the complaints most frequently made against teachers, the decisions of the Board indicate that it is either rare in actual occurrence, or difficult to prove. In an effort to throw more light on this matter, some attention is now given to the part played by the reports of school inspectors.

Reports of School Inspectors. The reports of inspectors of schools are known to have been a factor in only twenty-eight of the one hundred sixty-six decisions handed down by the Board. In four of the thirty-two cases settled on grounds of "inefficiency," the records show no mention of an inspector's report. It is, perhaps, significant that all four of these cases were decided in favour of the teacher. Of the other twenty-eight cases of this kind, the reports considered were favourable to the teacher in twenty; the Board's decisions were also favourable in twenty. In all but four of the twenty-eight cases in which an inspector's report was considered, the Board's decision was in conformity with the tenor of the

report. In two cases (1942 and 1952), the Board found in favour of a teacher in spite of an unfavourable report of an inspector; in two cases (1947 and 1955), the Board confirmed the termination of the contract of a teacher who had received a favourable report.

From the above analysis, it can be concluded that, while the Board has generally accepted the views of the inspector on the question of efficiency, it has not been invariably guided by them. The rather close conformity between the reports and the decisions seems to indicate that teacher inefficiency, at least to a degree justifying termination of contract, has been a relatively rare phenomenon during the period of the Board's operations.

To illustrate the analysis, Table III is now presented.

TABLE III

REFERENCES TO INSPECTORS' REPORTS

	Nature of Report		Board's Decision	
Year	Unfavourable	Favourable	Against Teacher	for Teacher
1934	0	8	0	8
1937	5	9	5	9
1938	0	1	0	1
1942	1	0	0	1
1947	0	1	1	0
1951	1	0	1	0
1952	1	0	0	1
1955	0	1	1	0
Totals	8	20	8	20

NOTE: Reports have been classified as favourable or unfavourable to the teacher on the basis of the comments about them in the reports of the Board. The classification, therefore, represents the interpretation of the Board, in so far as this can be established from the Board's reports.

It is considered desirable to add a few comments on the relation of school inspectors to the Board, even although these do not relate directly to the question of decisions based on efficiency.

Attention has been called to the relatively small number of cases in which reports of inspectors have been mentioned. It is possible however, that the figures of Table III may be somewhat misleading. Some of the remarks concerning teachers made by the Board in recording its

decisions strongly imply reference to inspectors' reports, although no such reports are actually mentioned. The quotations below are samples:

(1) From Case 18 of 1934, in which both teachers were reinstated: "Teachers who are capable and efficient should not be sacrificed in this capricious manner."[11]

(2) From Case 1 of 1940, in which the teacher's appeal was allowed: "It appears poor policy do dismiss a teacher that the board knows is doing good work for an unknown successor whose scholarship may or may not be superior to the appelant's."[12]

It may be, therefore, that inspectors' reports have played a larger part in the decisions of the Board than the figures of Table III would indicate. The investigator, however, has felt obliged to record in this Table only those cases in the records of which he has found specific mention of reports.

These records have revealed an impressive variation in the degree of importance attached by the Board to the reports which it has considered. This ranges all the way from complete reliance to an attitude bordering on mistrust. The former is found in Case 3 of 1934, where the Board gives its reason for reinstating the teacher as follows: "The Inspector's reports for the past three years show that she is industrious, efficient and a good disciplinarian."[13] The latter attitude finds expression in

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[11]Report of Board to Minister, July 26, 1934.

[12]Report of Board to Minister, August 8, 1940.

[13]Report of Board to Minister, July 26, 1934.

Case 2 of 1955, in reporting on which the Board stated: "The evidence on behalf of the board of trustees nullifies to a very great extent the fairly good reports of the inspectors."[14] A favourable report, while strong evidence on behalf of the teacher, has not guaranteed success at hearings by the Board.

The records indicate that the desirability of school inspectors attending hearings of the Board has been given some attention. On a few occasions, the Board has expressed displeasure at their absence. This occurred at two of the hearings in 1952, and resulted in representations being made by the A.S.T.A. to the Department, urging that superintendents be required to attend hearings to give evidence in support of the action of their school boards. In his reply, the Deputy Minister, while agreeing that inspectors of schools should be available to the Board in so far as other commitments might permit, maintained that they should attend only when required to do so under provisions of the Act. He gave it as his opinion that "Each man should appear by subpoena rather than appearing voluntarily." He went on to say,

> We think, in fairness to his relations to the teachers, that he should give his evidence because he is called and required to do so, and not as a voluntary partisan in the case on the side of the board."[15]

The fact that no further representations have been made on this matter, indicates that this view has been accepted by all concerned with the operations of the Board.

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[14]Report of Board to Minister, July 12, 1955.

[15]Letter from Deputy Minister of Education to General Secretary, A.S.T.A., July 23, 1952.

General Welfare of the District. The next class of decisions to be considered, that related to "the general welfare of the district," (Table II, page 90, heading 4) contains twenty-three, or 14.0% of the cases studied. It is noteworthy that twenty-one of these decisions, or 91.3%, went against the teacher. This means that 38.9% of all cases lost by teachers fell into this class, which was the only one in which school boards won the majority of decisions. It may be profitable to try to discover why this was the basis on which the Board relied most frequently for its decision to uphold a termination of contract. Why were school boards, who lost most of the decisions in every other class, so overwhelmingly successful in this one? In an effort to answer this question, it is proposed to look at a few cases of this type.

In recording its decision in Case 12 of 1934, the Board pointed out that the evidence had indicated that the teacher was "a very good teacher." The Board, however, was convinced that, for reasons which unfortunately are not made clear, he had lost the confidence of a majority of the trustees, and that the ratepayers of the district were also split on the question of his retention. The record concludes: "To compel the board to retain the teacher, in view of the situation which has developed, would in all probability be bad for both school and teacher."[16] The action of the board in terminating the contract was confirmed.

In its summing up of Case 25 of 1937, the Board stated that the trustees, whom it found to be men of considerable experience in

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[16] Report of Board to Minister, August 15, 1934.

school affairs, were "actuated by no ulterior motive, but solely with a view to the general welfare of the district and the betterment of the educational facilities therein."[17] No more specific reasons were given for the decision confirming the action of the trustees.

Case 2 of the same year is interesting, not only because of the grounds given for the decision, but also because of the Board's interpretation of the statutory provisions with respect to burden of proof. Of the teacher concerned, the Board said, "She impressed me as a person competent to do her work efficiently and with a very good personality."[18] In view, however, of the hostility towards the teacher which had developed in the district, the Board found that it would not be advisable to have her continue in this school. The record concludes with a quotation of subsection (3) (b) (IV) of the Act.

On the question of burden of proof, the Board, in this same case, made the following statement: "Although I do not approve entirely of the manner in which the board of trustees acted, I think I cannot say that I am fully satisfied that they did not act as reasonable persons should act in the discharge of their duties as trustees."[19] This statement strongly implies that the Board was interpreting the statute as placing the burden of proof upon the teacher, an interpretation which has been accepted and discussed in an earlier chapter.

The conclusion to be drawn from the cases just considered seems

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[17]Report of Board to Minister, July 22, 1937.

[18]Report of Board to Minister, July 29, 1937.

[19]*Ibid.*

to be that the Board has felt that circumstances, largely external to the school, may justify the termination of the contract of a teacher whose conduct, or efficiency, or character cannot successfully be impugned. Many other cases could be cited in support of this view. Two further deductions seem warranted:

(a) Clause (IV) of subsection (3) (b) has been a useful part of the provisions. In this connection, it has been noted that tenure legislation in the United States, in giving the grounds for dismissal, frequently concludes with some rather general statement such as "for other good and just cause." Similar wording is used in the Teacher Tenure Act of Saskatchewan.[20]

(b) The problem of public relations can be of vital importance in connection with teacher tenure and, therefore, efficiency of school operation. The close attention which the Alberta Teachers' Association has recently been giving to this matter would seem to be fully justified. It has clearly been the view of the Board of Reference that teachers must accept a considerable measure of responsibility for their relationships with the residents of the communities in which they work.

Financial Circumstances of the District. The category just discussed has been of interest because it is the only one in which school boards have won the majority of the decisions. It will be noted, however, that in one other class, namely that related to "financial circumstances" the decisions were very evenly divided, seven in favour of the teacher, and six against. The six school board victories in this class all came in

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[20] Revised Statutes of Saskatchewan, 1953, c. 185.

1934, which produced eleven of the thirteen cases of this type. This distribution is an interesting commentary on the effects of economic conditions on teacher tenure. The investigator considers that the Board deserves commendation for its protection of teachers during those trying times. It is worth noting that the reason of financial circumstances has not been alleged since 1940.

Grounds not specified in the statute. The reasons for the column headed "Other Grounds" in Table II, page 90, have already been stated. The nature of the cases included under this heading is now discussed.

Reasons might be advanced for making the list of "Other Grounds" either longer or shorter, and it has been necessary to make a number of rather arbitrary decisions. Brief reference to some of these decisions may throw some light, not only on Table IV, page 108, but also on Table II, page 90.

First, a few remarks about cases which do not appear in Table IV. In ten cases, the school board gave as its reason for terminating the contract its desire to secure a better qualified or more experienced teacher. In six cases, poor discipline was alleged. Lack of fluency in English and inadequate supervision of extracurricular activities each appear twice. All twenty of these cases have been regarded as coming under the heading "Inefficiency," and have been so treated in Table II.

Some of the cases treated under "Inefficiency" might have been included under "Other Grounds" and should, therefore, appear in Table IV. It would also be possible to justify including some of the grounds listed in this table in other sections of Table II. "Unsuitability for grade level," for example, might be regarded as synonymous with

inefficiency, but, in the case where this reason was alleged (Case 6 of 1940), the general efficiency of the teacher was not attacked. "Difficulties in money matters" is presumably related to "mode of life, character, or disposition," as also is "use of sarcasm." Again, it might be claimed that "participation in school board elections" is "misconduct," although the investigator would strongly maintain that a teacher should not, by reason of his profession, lose any of his rights as an elector.

Whatever may be the merits of the classification, the grounds listed in Table IV are of sufficient interest to justify their segregation in this fashion.

This Table is now presented.

TABLE IV

GROUNDS NOT SPECIFIED IN STATUTE

Ground alleged by School Board	Number of cases
Lack of cooperation with other teachers	2
Difficulties in money matters	2
Participation in school board elections	2
Ill health	1
Lack of cooperation with school board	1
Engagement in other occupation (farming)	1
Unsuitability for grade level	1
Use of sarcasm	1
Attitude towards Christmas concert	1
Racial discrimination	1
Unauthorized use of religious pamphlets	1
Desire of school board to establish retirement age for female teachers	1
Desire of school board to replace female by male principal	1
Desire of school board to replace male by female teacher	1
Desire of school board to replace non-bilingual by bilingual teacher	1
Total number of cases	18

In Table II, page 90, it was shown that teachers won all but three of the eighteen cases listed in Table IV. Of the three cases lost, one was related to suitability for grade level, one to participation in school board elections, and one to engagement in an occupation other than teaching. Details of the political case, unfortunately, have not been discovered. In recording its decisions in the last of the three cases, Case 45 of 1937, the Board stated its views as follows:

> Generally speaking, the fact of a teacher being engaged in some other occupation or having other interests outside his agreement with the board of trustees to teach has a tendency to cause dissatisfaction.[21]

Other cases of special interest in this category will be discussed in a later chapter.

In this Chapter, a general survey of the Board's operations has been attempted.

The next two chapters deal with hearings which, because of the issues involved, are of special interest from the point of view of tenure legislation.

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[21]Report of Board to Minister, July 24, 1937.

CHAPTER VI

CASES OF SPECIAL INTEREST 1934 - 1960

I. BASIS OF SELECTION

From the one hundred and sixty-six hearings which the Board conducted during the years 1934 to 1960 inclusive, some thirty cases have been chosen for discussion in this and the succeeding chapter. In making the selection, the investigator has had three types of case in mind, corresponding to three purposes which he hopes to achieve.

In the first place, cases have been chosen because they illustrate the way in which the Board has dealt with certain problems of tenure. The following questions have governed the selection of cases of this class:

(a) Do some cases give any indication of what the Board has considered to be "reasonable action" on the part of trustees?

(b) Do some decisions give the Board's views with respect to acceptable and unacceptable conduct on the part of teachers?

(c) Has the Board undertaken to interpret the duties of a teacher as set out in the Act?

(d) Are any cases indicative of the Board's sense of its responsibilities as an agent of teacher tenure

(i) to protect school boards against the incompetence and other faults of teachers?

(ii) to protect teachers against capricious and irresponsible action by school boards?

Under this heading the investigator has been seeking primarily cases which may be used as the basis for the evaluation, to be attempted in the concluding chapter, of the Board's effectiveness as a promoter of efficient school operation.

Another group of cases has been selected because of their interest with respect to the Board's jurisdiction. Some of these involve school principals. It will be found that the Board's competence to deal with some of the cases referred to it has been seriously challenged. It is felt that this is a question with which the study should deal.

Finally, a fairly large number of cases have been chosen because of their general interest with respect to the nature of the complaints laid against the teacher, the proceedings during the hearings, and the grounds on which decisions have been handed down. Their inclusion reflects the investigator's belief that consideration of them will provide background for the conclusions to be drawn later in the study.

The cases will be treated in the order of this somewhat arbitrary classification. No attempt has been made to follow a chronological sequence, but the desirability of spreading the choice over the period covered has been kept in mind.

Cases of the first type will be treated in this chapter, those of the other two types in Chapter VII.

As in Chapter IV, the main source of data is the reports of the Board to the Minister of Education.

II. CASES ILLUSTRATING BOARD'S HANDLING OF TENURE PROBLEMS

Case 2 of 1955. This case is interesting because of the light which it throws upon the relative importance attached by the Board to teacher efficiency, on the one hand, and other facets of teacher character and conduct on the other.

The teacher involved had one year professional training and six years of teaching experience, two of them with the school board by which she was dismissed. No reasons were given in the notice of termination received by the teacher, but the application for a hearing by the Board refers to an interview with the school board, during which the teacher was accused of several misdemeanors. Among the faults mentioned were the following:

(1) Reading to the class a confidential letter received from a parent.

(2) "Lack of system." Presumably this referred to the teacher's organization of classroom procedures.

(3) Critical references to the classroom management of other members of the teaching staff.

(4) Lack of cooperation with the Principal.

The teacher was not present at the hearing, having left the Province to attend a summer school elsewhere. Through her counsel, she denied accusations (1) and (3). She replied to number (2) by referring to three inspectors' reports, all of which described her as a competent

teacher. Her reply to accusation (4) involved a considerable amount of recrimination, with counter-charges concerning the Principal's handling of discipline, noon-hour supervision and other matters.

The records of the hearing do not give the evidence brought forward by the school board in support of its accusations. Reference is, however, made to a petition signed by forty parents requesting the trustees to dismiss the teacher.

The evidence adduced by the school board must have been quite convincing. The Board stated that it was much more impressed by this evidence than by the "Fairly good" reports of the inspectors. It confirmed the termination of contract. The summing up of the evidence indicates the reasons for this decision. The Board was apparently convinced that the teacher had refused to observe school rules and, specifically, to comply with instructions of the Principal. It found that she had incurred the active dislike of her pupils by employing excessive detentions, and that she had persisted in so doing in spite of the repeated protests of parents. Finally, it found that her attitude to the trustees had been "impertinent, if not altogether contemptuous."[1]

These faults, the Board found, outweighed the efficiency of the teacher in the classroom. The report closes as follows: "The applicant, while no doubt a very competent person with good ability, lacks many of the qualities necessary for a suitable and efficient teacher <u>for this</u> school."[2]

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[1]Report of Board to Minister, July 12, 1955.

[2]<u>Ibid</u>.

This case shows that, in the view of the Board, teaching competence is not, in itself, enough to ensure retention of position. Other factors such as readiness to cooperate with other teachers, especially with the Principal, and ability to establish and maintain good rapport with pupils and parents, are also essential. The Board was clearly giving close attention to part (ii) of clause (b) of section 355 (3). It presumably came to the conclusion that there was something in

> ..... the disposition of the teacher of a nature calculated to make the retention of the teacher detrimental to the proper and efficient conduct of the school .....[3]

Case 4 of 1947. This case is similar to that just considered in that it also involved the question of cooperation with other members of the teaching staff. In this case, however, the applicant was the Principal of the school. The case is also interesting because of the fact that several teachers were called as witnesses.

In the town district in which the applicant was employed, two schools were operated, one for grades I to VI, the other for grades VII to XII. Each of these schools had a principal, the applicant being principal in the elementary school. Throughout the hearing , there were indications that relations between the two principals had not been good; further, there had apparently been a considerable amount of dissension between the applicant and other members of the teaching staff.

The evidence showed that, early in June, the applicant had written to the school board, recommending that grades VII and VIII be transferred to his jurisdiction. The records, unfortunately, do not indicate whether

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[3]R.S.A. 1955, c. 297, s. 355.

or not there had been consultation between the principals prior to the writing of this letter. On June 10, the school board decided to act on the recommendation. When this decision was made known to the teachers, they protested so strongly that the trustees, at a special meeting on June 15, rescinded their former motion and decided to conduct a thorough investigation into the dissension within the staff, which had thus been brought forcefully to their attention. The outcome of the investigation was the conclusion by a majority of the trustees that the applicant was responsible for the trouble in the school, and the decision to terminate his contract. This action was taken on June 19.

In the ten-page declaration accompanying his application for a hearing by the Board, the applicant strongly denied the allegations of the trustees that he had caused dissension on the teaching staff. In their evidence, however, the trustees stated that, in the course of their investifation, teachers had referred to examples of friction resulting from decisions made by the applicant.

The high school principal, in his evidence, referred to conflict between the applicant and two members of the high school staff. He was cross-examined by the applicant's counsel, who attempted to establish that this dissension, even if it had existed, was not necessarily serious, since the teachers concerned were not on the applicant's staff. The high school principal refused to accept this view, since the cause of the disagreement had been the sharing of playground space common to both schools.

In spite of the Board's repeated efforts to hasten proceedings, the hearing developed into one of the longest on record. The applicant's

counsel made a strong defence. He called a teacher who stated that he had no knowledge of friction on the staff. On cross-examination by the trustees' counsel, this teacher admitted that there had been some disagreement on the matter of salary negotiations. The defence also summoned a parent, who testified to the efficiency of the applicant and his popularity with the students. One of the trustees, called by the defence, stated he disagreed with the school board's decision, and voted against the dismissal motion. On cross-examination, however, he admitted that he had not participated in the investigation conducted by the other trustees.

The applicant himself, called by his counsel, admitted having had differences of opinion with teachers on playground schedules and homework assignments. He insisted that his decisions had been made in the interests of the pupils. He also admitted that he had differed with some members of his staff on the matter of salary negotiations. On cross-examination, he strongly denied any interference in matters coming under the jurisdiction of the other principal.

The Board, whose impatience with the protracted nature of the proceedings is clearly indicated in the record, found in favour of the applicant. It ruled that the termination of contract would not be in the best interests of the school. It was apparently strongly influenced by the conflicting nature of the evidence and, especially, by the lack of unanimity on the school board.

Here, as in the first case considered, the efficiency of the applicant as a classroom teacher was a minor issue. The important question was the applicant's relations with other members of the

teaching staff. Had the Board found the applicant responsible for the dissension which undoubtedly existed, it would presumably have upheld the dismissal. The decision indicates that, in the view of the Board, the existence of conflict within the staff does not necessarily mean that the principal should be dismissed; the onus of proof of his responsibility for such a condition rests on the school board.

Case 1 of 1952. At the risk of overemphasizing the Board's views of the responsibility of a principal for staff harmony, one further example of this type will be examined. The case is somewhat different, in that the dissension was largely limited to conflict between the principal and one teacher on his staff.

Here, again, the applicant was a principal, holding a high school certificate and having had fourteen years of experience, five of them with the school board by which he had been dismissed, and four as principal of the school in which the trouble had arisen. Signs of the trouble appeared early in the school year, in the form of a letter written September 1 to the divisional board by one of the teachers. In this letter, the teacher stated her intention to seek the Minister's permission to resign, since she felt that it was impossible for her to do justice to her work under the Principal's administration. The teacher was presumably basing her decision on experiences of the previous school year, but the significance of the date of her letter was fully appreciated by the Board in the course of its hearing. As a result of the letter, the A.T.A. was asked by the Division to conduct an investigation. This intervention by the Association apparently resulted in at least a

temporary reestablishment of harmony, but trouble broke out again at the annual meeting of electors in February, when the teacher made remarks critical of the Principal's administration of the school. These remarks led, some months later, to a resolution passed by a vote of three to two by the district board, recommending to the divisional board that the Principal be dismissed. This action was taken under that section of the School Act which empowers the board of a district included in a division to "make representations to the superintendent and to the divisional board as to the betterment or extension of the educational facilities for residents of the district."[4]

On June 6, the divisional board requested the Principal's resignation and, when this was refused, sent him notification of termination of contract on June 12. In doing so, the school board apparently gave no reasons, since the Principal's declaration gives the nature of the complaint as "unknown," although it does refer to a meeting with the board on June 10.

The hearing quickly established the grounds for dismissal .... dissension among members of the teaching staff for which the school board held the Principal to be responsible. The applicant's counsel showed that, even on the district board, his client had strong support, one of the three members who had voted against him having later written to the Division requesting that he be retained. The Superintendent, while stating that he had had no difficulty with the Principal, favoured

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[4]R.S.A. 1955, c. 297, s. 190, (2) (i).

dismissal because of the conditions within the school staff.

The Board again upheld the Principal's appeal and disallowed the action of the school board. In the exceptionally long report to the Minister, two points are made very clear. In the first place, the teacher, rather than the principal was found responsible for the dissension. On this issue, the Board stated its views as follows: "Mrs. ..... resented the authority of Mr. ....., as I think she would resent the authority of anyone who would not conform to her wishes."[5] The report proceeds to make the following comment on the relations between a principal and his staff: "The duties of a principal are defined in section 371 and, by their very nature, he is entitled to and must have cooperation from his staff to enable him to carry out those duties, and he must, of course, afford his teachers reasonable cooperation and assistance."[6] The Board evidently concluded that cooperation had been refused by the teacher mentioned in its report.

In the second place, the Board emphasized the serious nature of the conflict within the staff, and pointed out that, unless corrected, this condition would continue to menace the efficiency of the school's operations. The Department was, perhaps, able to draw some comfort from the fact that the Board found the situation atypical. "The circumstances here are exceptional and the Department is entitled to a fuller report than is usually given."[7] The report concluded by indicating that "a

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[5]Report of Board to Minister, July 25, 1952.

[6]Ibid.

[7]Ibid.

wholesale cleaning out may be required."[8]

The decision again exemplifies the realization by the Board of its responsibility to investigate very fully the dismissal of a principal on grounds of staff dissension. It reiterates the view that the mere existence of such dissension, even in serious form, does not in itself justify removal of the principal. Staff morale is a matter for which both principal and teachers have responsibilities.

The decision is particularly interesting because it was contrary to the expressed views of both district and divisional boards and of the Superintendent. It serves to show that a completely disinterested investigator may come to a decision quite different from that of officials actively engaged in the administration of a school.

Cases 8a and 8b of 1934. For examples of the Board's readiness to criticize a school board for what it considered to be unreasonable action, the investigator wishes to turn to two cases, 8a and 8b of 1934.

The two cases are grouped because they involved the same town school board, which had terminated the contracts of all five members of its teaching staff. Case 8a is that one of the teachers; case 8b is that of the Principal.

The record of the hearing strongly suggests that the school board's action was prompted by its desire to engage teachers who would accept lower salaries. The evidence revealed that three of the five teachers were being paid the minimum salary permissible under the Act - $840 per annum - and that the Principal's salary had been reduced from $1800 to

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[8] Ibid.

$1275. The school board, however, did not seek to justify its action on the basis of "financial necessities." Presumably the trustees realized that this would not be wise: the record shows that the Board found the school district to be in good financial condition.

The teacher involved in case 8a was a well qualified lady holding an arts degree and special certificates in music. The school board sought to justify her dismissal by charging inefficiency, supporting this charge by reference to results obtained by her students in departmental examinations. The Board established that this teacher had been made responsible for the whole of the instructional program in grades V, VI, and VII (enrolment 47 pupils), for part of the program in grade VIII (20 pupils) and for two subjects in the high school. The Board's views of this teaching load and of the school board's attitude towards the teacher's efforts to handle it are noteworthy. It commented as follows:

> The plain common sense of this matter is that this teacher has too many pupils and too many grades entrusted to her care. It is most unreasonable to compel a teacher to work under these conditions and then complain when she does not achieve the impossible.[9]

While he accepts the Board's view without reservation, the investigator wishes to point out that such teaching loads were by no means uncommon in Alberta at this time.

The dismissal of the Principal, a well trained, experienced teacher of Ukrainian origin, had been based on the desire expressed by the school board to obtain the services of an English-speaking principal. It is not

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[9]Report of Board to Minister, July 17, 1934.

difficult to imagine the feelings of the trustees as the Board stated its views on this matter as follows: "I heard Mr. ..... give his evidence in the witness box. He has a copious vocabulary, and speaks English with ease, fluency and precision."[10]

Having been defeated with respect to their main reason for dismissal, the school board fell back on a secondary one, namely the periodic absence of the Principal to attend sessions of the legislature. This basis was, however, also rejected when evidence was brought forward to show that the trustees, at a regularly called meeting, had consented to such absence on the understanding that the Principal would supply a substitute.

It is hardly necessary to add that the dismissals were disallowed and that all five teachers were reinstated. These cases illustrate the Board's concept of unreasonable action on the part of trustees. Here, certainly, the Board was providing badly needed protection for teachers who deserved it. It is worth noting that, had these cases occurred one year earlier, the teachers would almost certainly have been without any such protection, since there is in the record no indication that the school board would have agreed to arbitration.

Lest he should seem to be attaching too much attention to cases in which the Board supported the teacher, the investigator proposes to turn next to a series of cases in which decisions were given for the school board. One of these involves non-compliance by the teacher with statutory provisions, one involves the teacher's character and

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[10] Ibid.

disposition, and the third is an example of one phase of inefficiency.

Case 14 of 1939. Application for a hearing was made by the trustees of one of the recently established divisions. The dispute had arisen as a result of the teacher's resignation, which evidence showed to have been submitted to the school board on July 24. At this time, the Act required a teacher to give notice of termination of contract on or before July 20, unless the approval of the Minister were obtained for a later resignation.[11] No such approval had been obtained. The teacher's counsel endeavored to have the application thrown out on the ground that it had not been filed within ten days of the arising of the dispute. This objection was overruled by the Board. It is, indeed, difficult to understand why it was brought forward, since at this time, as a result of an amendment in 1938, the only limitation on the date of application was the requirement that it be made "not later than the tenth day of July next following the arising of the dispute."[12]

The appeal of the school board was allowed and the teacher was ordered to return to duty in the Division. Here the Board was clearly demonstrating its interpretation of tenure as involving responsibilities on the part of the teacher as well as on the part of the school board. The decision is entirely consonant with the fifth in the list of criteria set out on page 7 of Chapter I.

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[11]S. A. 1939, c. 20, s. 10.

[12]S. A. 1938, c. 37, s. 6.

Case 13 of 1939. The recital of the series of cases decided in favour of the school board is interrupted in order to show that trustees were not always successful in their efforts to persuade the Board to require teachers to honour their contracts. Case 13 of 1939 involved an application made by a school board with this purpose. The teacher concerned had failed to report for duty. The evidence, however, revealed that the contract had stipulated a salary below the minimum permissible under the Act, and that the school board had failed to secure the Minister's permission to pay such a salary. The Board ruled that no contract existed and that, therefore, it could not allow the school board's appeal. It regretted its inability to support the school board, and expressed the opinion that the teacher's conduct should be brought to the attention of the A. T. A. The Board was applying the principle that statutory provisions are equally binding on both parties. Indirectly, it was protecting teachers against illegal contracts.

Case 21 of 1937. The teacher was appealing a dismissal based on what the school board considered to be a fault in his "character or disposition." This is made clear by the reference to the statute made by the Board in handing down its decision, which upheld the school board's action.

The evidence showed that the trustees had referred to the school inspector complaints which they had received from parents concerning the teacher's behavior. The inspector had investigated these complaints and, in the words of the record, his subsequent report "amply justified the trustees in the action they took."[13]

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[13]Report of Board to Minister, August 9, 1937.

The specific nature of the alleged fault in the teacher's character is not revealed in the Board's report. The lack of any reference to misconduct or inefficiency and the clear-cut reference to the Act do, however, make the general nature of the school board's basis for dismissal quite manifest. The Board, with subsection (3) (b) (ii) in mind, was ruling that some qualities, not definitely immoral or directly affecting efficiency, may make a person unsuitable for work in the classroom. It was, also, in this case, accepting without question the view of the school inspector.

Case 6 of 1940. This is interesting as indicating the Board's interpretation of inefficiency in relation to grade assignment. The teacher, who had good qualifications for high school work and some considerable experience at that level, had accepted a position as teacher of an elementary grade in a town district. The school board had dismissed him on grounds of inefficiency. The school inspector, appearing under subpoena, gave evidence to show that the teacher's work, at this grade level, had not been completely satisfactory. The School board's action was upheld, the Board stating that it found the teacher poorly equipped for work in the lower grades.

Here the Board was ruling that a teacher, in order to attain security of tenure, must demonstrate efficiency, or, at least, freedom from serious inefficiency, at the grade level at which he has undertaken to give instruction. Efficiency at any other level is not enough. The decision has interesting implications, not only for teachers and administrators, but also for those engaged in the organization of teacher training programs.

Case 12 of 1937. At the risk of seeming again to jump from one type of decision to the other, the investigator wishes to mention a case presenting a rather interesting contrast with that just considered.

Here, the teacher had accepted responsibility for the senior room of a two-room school. Her work in this room had, apparently, not been successful. While the record makes no reference to the opinion of the school inspector, the Board came to the conclusion that she was not suitable for the position which she had accepted. The report proceeds to point out, however, that "it was not disputed that, as a teacher of the junior grades, no objection would be taken."[14] The Board reinstated the teacher, suggesting that she be assigned to the junior room. This decision was given in spite of the fact that the school board claimed that it had already appointed teachers for both rooms. Possibly the Board's decision was influenced to some extent by the evidence of nepotism in connection with the school board's appointments.

The decision implies that, where a school board has on its staff a vacancy for which a teacher in its employ has demonstrated suitability, it must offer that position to the teacher, even although the latter has proved inefficient at another grade level. Only if the teacher refuses to accept the transfer is dismissal justified. It is interesting to speculate how widely this principle has been invoked by teachers and applied by school boards.

It is, of course, not necessary to conclude that the last two decisions are inconsistent, since the record does not indicate that,

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[14]Report of Board to Minister, July 22, 1937.

in case 6 of 1940, the school board had a vacancy on its staff at the high school level.

Case 35 of 1937. In this case, the Board rejected the school board's interpretation of the duties of a teacher. The school board sought to justify its termination of the teacher's contract by alleging that she had failed to exercise proper control of her pupils outside of school hours. When it was established that no complaints had been registered concerning the teacher's efficiency in the classroom, the Board expressed its view that the trustees had not acted "as reasonable persons should act in the discharge of their duties as trustees," and disallowed the school board's action. In rendering its decision, the Board made it clear that it felt that control of pupils outside of school hours was not part of a teacher's duties.

The investigator has found no similar case in more recent years. Should one arise, it would be interesting to discover what effect, if any, the great expansion of extracurricular activities has produced on the thinking of the Board concerning the teacher's responsibilities for the supervision of these activities.

As pointed out in Chapter V, cases of alleged misconduct on the part of a teacher have been relatively rare, only six decisions having been based mainly on this charge. Three of these cases are now discussed briefly by way of illustration of the Board's views on this matter.

Case 5 of 1937. Here the school board alleged that it had received complaints to the effect that "the teacher was addicted to

excessive drinking of alcoholic liquors."[15] The Board, however, found that the complaints had taken the form of rumours, and that they were without satisfactory proof. The Board commented as follows on the source of the complaints: "The moving spirit against the teacher was the Secretary-Treasurer, at whose home the teacher was boarding from the beginning of the school term until the Christmas holidays."[16]

After efforts to prove poor discipline had broken down under cross-examination, the Board disallowed the school board's action and reinstated the teacher.

Case 51 of 1937. The school board alleged that the teacher had been sleeping during school hours and that he had used improper language on the playground. The Board, however, found that the reasons advanced in support of the dismissal were "of a most trivial nature."[17] It stated, further, that it had been established to its satisfaction that the teacher had conducted school efficiently. Again, the teacher was reinstated.

These cases show that the Board has seen two conditions as essential for the justification of dismissals based on alleged misconduct. In the first place, the charges must involve matters of considerable gravity; the Board would seem to have been willing to entertain under this heading only charges involving "gross" misconduct. In the second place, the

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[15]Report of Board to Minister, August 17, 1937.

[16]*Ibid*.

[17]Report of Board to Minister, August 6, 1937.

charges must be fully proven. Mere rumour had not been enough.

In this respect, the Board seems to have taken a stand more sympathetic to the teacher than that commonly found in the United States. At least one of the American writers consulted has indicated that serious suspicion of moral misconduct has often been deemed sufficient cause for dismissal by tenure commissions.[18] It seems fair to say that, whatever may have been the situation elsewhere, the principle that the defendant is innocent until proven guilty has been consistently applied in cases of alleged misconduct coming before the Board of Reference in Alberta.

Case 32 of 1937. It is proper to point out that some types of misconduct have been more readily established in the eyes of the Board than others. In case 32 of 1937, the school board charged that the teacher had taken "unauthorized action with respect to examination papers."

The report of the Board reads in part as follows: "It was established by the evidence that the teacher had been quite indiscreet in that she had ..... obtained possession of the package and broken the Government seal thereon before the time at which the package should have been opened."[19] There was, apparently, little, if any, defence, and the Board showed no hesitation in confirming the dismissal.

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[18] B. J. Chandler and P.V. Petty, Personnel Management in School Administration, Yonkers on Hudson, New York: World Book Company, 1955, P. 300.

[19] Report of Board to Minister, August 5, 1937.

Case 20 of 1937. Cases have not been lacking in which the Board, through its decisions, has shown its readiness to support school boards in their efforts to increase the efficiency of their schools, even when these efforts have involved the dismissal of teachers. In case 20 of 1937, a teacher holding a second class certificate had been dismissed because the school board felt under the obligation to accede to the desire expressed by its electors, at two successive annual meetings, that it engage a teacher holding a first class certificate. Presumably the Board, in confirming the dismissal, was expressing its view that the desire of the electors was a reasonable one, and that the teacher, by his failure to make some effort to improve his qualifications, had forfeited his right to tenure. Other cases have indicated the Board's willingness to protect teachers making what it has considered to be reasonable efforts to improve their qualifications.

In Chapter V, some attention was given to decisions based on the Board's view of what constituted the "general welfare of the district." It was pointed out that decisions based on this consideration were overwhelmingly against teachers. An effort was made to assess the significance of this feature of the Board's operations, and three cases were cited as background for this attempt. At the risk of needless repetition, another decision of this type is now considered. One feature of this case makes it sufficiently different from those used in the previous chapter to warrant its inclusion.

Case 1 of 1939. The teacher's appeal against dismissal was

disallowed "with much hesitation."[20] In its report, the Board stated its conviction that the school board was itself largely to blame for the situation which had led to the dismissal of the entire staff. On the other hand, it expressed the view that both the applicant and the district would suffer if she were to continue to teach in the school, "unless the school board requests her to do so and gives her the support which she deserves."[21]

It is impossible to read this decision without concluding that the Board, while confirming the school board's action, felt that this body, rather than the teacher appealing the dismissal, was to blame for the dispute. The Board evidently judged that it would be unwise for the teacher to attempt to overcome local hostility for which she was not entirely to blame; at least, that her attempt to do so would almost certainly fail without the active support of the school board. Convinced that this support would not be forthcoming, the Board made its decision on the basis of what it considered to be the best interests of both teacher and district.

The case is a further illustration of the importance of public relations in the realm of school administration. It is also of interest as an example of the difficulty of weighing the seriousness of local hostility to a teacher against that teacher's competence and integrity. The hesitation admitted by the Board in making its decision seems to indicate that, in cases of this kind, principles other than those of abstract justice may have to be considered.

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[20] Report of Board to Minister, August 1, 1939.

[21] *Ibid.*

III. CONCLUSIONS BASED ON THESE CASES

Brief answers to the questions which were set out on the first page of this chapter are now given. In using the cases cited herein as the basis for these answers, the investigator wishes to point out that these cases are typical of many others which might have been cited in support of the views now to be stated.

"Reasonable Action" by Trustees. The Board's decisions suggest the following concepts of what constitutes "reasonable action" on the part of trustees:

It is reasonable for trustees to give attention to complaints expressed by their electors with respect to the services or conduct of teachers. It is reasonable for trustees to endeavor to meet the wishes of their electors concerning the qualifications to be required of teachers in their school. It is especially reasonable for trustees to give ear to such complaints or wishes when they are expressed through such legally provided means as annual meetings of electors.

It is unreasonable for trustees to dismiss teachers on the basis of complaints which they have not fully investigated. If the complaints relate to the efficiency of the teacher, an effort should be made to ascertain the opinion of the school inspector. If the complaints relate to conduct, the trustees, before dismissing the teacher, must assure themselves that the complaints concern matters of grave moral import, and that they are firmly supported by creditable evidence.

It is unreasonable for trustees to dismiss teachers because of their failure to handle with complete success unrealistically heavy

teaching loads. From this it follows that a school board has the responsibility of providing, within its means, the type and size of staff which will result in each teacher receiving an assignment at which he may reasonably be expected to succeed.

Conduct of Teachers. On the subject of the conduct of teachers, the Board's decisions indicate the following views:

When fully proven, misconduct of a serious nature destroys the rights of even competent teachers.

Teachers should show consideration for the feelings of other members of their staffs, and should so conduct themselves that the harmony of staff relationships is not disturbed. This applies with especial force to teacher-principal relationships, but a principal cannot always be held responsible for lack of harmony on his staff.

Teachers should be aware of the effects of their conduct upon the relations of the school to the community. They should also realize that these public relations may have drastic effects on their own security of tenure.

Duties of Teachers. With respect to the duties of teachers, the Board has viewed the enumeration in the Act as exhaustive. No teacher should be dismissed for failure to perform a function not required by the Act.

Competence of Teachers. The Board has definitely accepted its responsibility to support school boards in their efforts to rid their schools of incompetent teachers. In this connection, it has ruled that

competence in the position held is necessary to assure tenure of that position. Generally, but not invariably, it has accepted the views of school inspectors with respect to the efficiency of teachers. It has indicated that teachers have responsibilities in relation to the improvement of their qualifications, and that apathy in this matter adversely affects their tenure rights.

Protection of Teachers. The Board's acceptance of its responsibility to protect teachers against capricious and irresponsible action by school boards has been equally unhesitating. While it would be incorrect to think that all decisions given in favour of teachers have resulted from such action on the part of trustees, the wording of the reports, especially in the first decade of the Board's operations, makes it clear that such action has been distressingly frequent. The following quotations will serve as illustrations:

"Teachers who are capable and efficient should not be sacrificed in this capricious manner.[22]

"The Chairman is about the only person dissatisfied with Miss .....'s work."[23]

"The (school) board had made up its mind to fire Mrs ..... regardless of her conduct. It placed too much reliance on the complaints of the children."[24]

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[22]Report of Board to Minister, July 26, 1934.

[23]Report of Board to Minister, August 9, 1937.

[24]Report of Board to Minister, July 22, 1952.

Statements of this kind make it clear that the protection afforded good teachers by the Board of Reference has been needed, and that the Board has been fully aware of its responsibility in this regard.

IV. OTHER CONCLUSIONS

In addition to the above answers to the questions raised at the beginning of the chapter, it is felt that the following views are implicit in the decisions rendered by the Board on some of the cases discussed.

As pointed out above, decisions have made clear the Board's view that tenure legislation exists for the protection of both teachers and school boards. This protection entails corresponding responsibilities on the part of both beneficiaries. It requires, for example, that teachers honour their contracts, and give proper notice of their termination.

Finally, it is necessary again to emphasize the importance attached by the Board to its concept of the "general welfare of the district." As pointed out earlier, this concept has, in a number of cases, produced decisions unfavourable to teachers with respect to whose competence and integrity the Board had no serious doubts. While this feature has probably already been given sufficient prominence, one further quotation is used to illustrate it. In announcing its decision to uphold the school board's action in case 19 of 1938, the Board wrote the following statement into the records: "I have, notwithstanding the fact that I consider Mrs..... is a capable and conscientious teacher' been forced to the conclusion that it will be in the best interests of

the school district and, possibly, of Mrs..... herself, that the contract be terminated."[25]

The twenty-three cases of this type prove the wisdom of including in the legislation the last clause of section 355 (3) (b). The twenty-one decisions against teachers indicate that the administration of tenure legislation in Alberta has been considerably influenced by the aspirations and demands of pressure groups within the school districts.

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[25]Report of Board to Minister, July 26, 1938.

CHAPTER VII

FURTHER CASES OF SPECIAL INTEREST, 1934 - 1960

In this chapter, the examination of cases of special interest is concluded by dealing with the last two of the three groups mentioned at the beginning of Chapter VI. Cases selected because of their bearing upon questions of the Board's jurisdiction are considered first.

I. CASES INVOLVING THE BOARD'S JURISDICTION

In two cases in 1947, the jurisdiction of the Board was unsuccessfully challenged by counsel for the school boards involved. Each of these cases resulted from the termination of the contract of a principal. Before examining these cases, it will be well to look briefly at the relevant provisions.

Provisions re Board's Powers. First, a brief review of the situation with respect to the Board's powers. It will be recalled that, from its establishment in 1926 until the amendment of 1941, the Board was empowered to deal with a dispute of any kind between a school board and a teacher. The amendment of 1941 restricted its scope to disputes "with respect to the termination or cancellation of a contract or engagement."[1] This restriction has remained in effect.

Provisions re Principals. Next, since the cases to be examined involved principals, it will be helpful to look at the statutory

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[1]S.A. 1941, c. 35, s. 15.

provisions governing their appointment and dismissal.

Provisions concerning principals of schools have appeared in Alberta legislation since the establishment of the Province. Since 1931, the Act has required the appointment of a principal where more than one teacher is employed, and has given some indication of his duties. No special provisions concerning designation and termination of designation of principals appear, however, prior to 1949. Until 1949, therefore, a principal had no security of tenure other than that afforded him as a teacher. In that year, the provisions which, substantially, are still in effect were introduced.[2] These provisions left the requirements as to notice of termination of designation identical with those applying to teachers' contracts. They prescribed different procedures with respect to appeal. Since, however, these procedures were not in effect when the cases now to be examined occurred, and since they involve appeal to the Minister rather than to the Board of Reference, it is not necessary to discuss them further.

Case 1 of 1947. The appelant had, for some years, been the principal of a divisional school. The school board's notice read as follows:" I hereby notify you that your services as principal of any school of more than one room in this division will no longer be required ......"[3]

It would seem that the notice was intended to terminate the designation of the teacher as principal, but not her contract as a teacher. This, certainly, was the interpretation of the counsel for the school board,

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[2]S.A. 1949, c. 91, s. 20.

[3]Report of Board to Minister, July 26, 1947.

who contended that the jurisdiction of the Board did not extend to cases involving "the dismissal of a principal while still retaining his or her services as a teacher."[4] In support of his view, he quoted section 171 (2) of the School Act, which then read as follows:

> When any dispute or disagreement arises between a school board and its teacher or teachers with respect to the termination or cancellation of a contract or engagement between such board and its teacher or teachers, either party to the dispute or disagreement may make application to the Minister to refer such dispute to the Board of Reference.[5]

The school board's counsel was maintaining that a termination of designation as principal did not constitute a termination of a contract and that the appeal was, therefore, ultra vires the Board. The Board, however, ruled that the case was within its jurisdiction. Its reply to the objection ran as follows: "In passing section 171, it was the intention of the Legislature that all disputes arising between teachers and school boards could be referred to the Board of Reference."[6]

In so ruling, the Board was certainly not overlooking the restricting amendment of 1941, although the wording might seem to suggest this. Rather, the Board was holding that a designation as principal constituted a contract. In view of the lack at that time of any legislation dealing specifically with termination of designation as principal, the ruling was a reasonable one.

As the case proceeded, the school board gave as its reason for terminating the designation the fact that the school was being expanded

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[4] Ibid.

[5] R.S.A. 1942, c. 175, s. 171.

[6] Report of Board to Minister, July 26, 1947.

and that it required a male principal. It also alleged dissatisfaction on the part of the district board and some disputes between the principal and assistant teachers. The Board rejected all the reasons advanced by the trustees as "petty" and allowed the appeal of the principal, whose designation was thereby continued in effect.

Case 2 of 1947. This was similar in that it involved the termination of designation of the principal of a high school by a town school board wishing to retain his services as teacher of Grade IX. Again the school board's counsel challenged the jurisdiction of the Board to entertain the appeal, but the Board held to its ruling in Case 1. In this case. however, the school board's action was upheld.

The decision is somewhat surprising in view of the favourable reports which had been written by the High School Inspector on the appelant's work as principal in this school.

The challenges issued to the Board's jurisdiction in these cases, while unsuccessful, at least served to call attention to the somewhat uncertain situation in which the legislation stood. Unquestionably these cases were a factor in the Department's decision to clarify the relationship between teachers' contracts and principals' designations, a decision which led to the amendment of 1949.

Case 6 of 1947. In this case, the Board pronounced its own lack of jurisdiction, and this only after a very lengthy hearing involving many charges and counter charges.

The case again involved a high school principal, but here termination of contract rather than of designation was being appealed. The

school board was the Official Trustee of a large rural district. The decision to dismiss had been taken because of the Official Trustee's conviction that the Principal's relations with students had deteriorated to a level which was seriously threatening the efficient operation of the school. There were references during the hearing to a students' strike, and charges were made that the Principal, by his unsympathetic attitude, was driving students out of the school.

The appelant defended himself strongly, his counsel bringing in evidence to show that due provision had been made in the school's program for weak students, and that staff relationships were harmonious. The Board was evidently impressed by the defence. It commented as follows: "I think this man is aggressive, but he is also a good teacher."[7]

This and similar comments give good reason to believe that, had a decision been rendered, the applicant would have been reinstated. No decision, however, was given. The case turned on the validity of the resignation which the Principal had sent to the Official Trustee at the time of the students' strike in April, and which he claimed to have withdrawn at a later date. After listening to a great deal of conflicting evidence on this issue, the Board ruled as follows: "In view of the teacher's conditional resignation ..... and its acceptance by the Official Trustee, ... I have no jurisdiction in the matter."[8] By way of recommendation, it added, "I think he (i.e., the appelant) should be reinstated, but that is a matter for the Official Trustee to deal with.[9]

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[7]Report of Board to Minister, July 25, 1947.

[8]Ibid. [9]Ibid.

The record shows that the Official Trustee enforced the dismissal, and appointed another principal.

It is difficult to understand why the question of the validity of the resignation was not dealt with at the outset of the hearing. Had this been done, it would seem that a considerable waste of time and money might have been avoided, to say nothing of a great deal of unfavourable publicity for both the Principal and the Official Trustee. Incidentally, the records indicate that the animosities engendered by the hearing persisted for some time.

II. CASES OF GENERAL INTEREST

In this last general category of cases, three types have been included. In the first place, an examination will be made of a set of cases in connection with which the consistency of the Board's decisions is questionable. Secondly, an example of the Board's rare uncertainty concerning the soundness of its decision will be considered. The last case to be examined has been included because of the light it throws upon procedures at hearings.

Cases Involving Decisions of Questionable Consistency.

With the exception of one falling in 1934, the cases of the first type all occurred in 1937 and 1938. All involved questions of statutory non-compliance, two on the part of the teacher and the others on the part of the school board. Those in which the actions of the teachers were challenged will be considered first.

In dealing with these cases, both of which occurred in 1937, it is

necessary to keep in mind that, at this time, the Act required the application for a hearing to be submitted to the Minister "within ten days after the date upon which the dispute or disagreement shall have arisen."[10]

Case 15 of 1937. The school board proved that the teacher had not submitted her application to the Minister within the time prescribed. On this basis, her appeal was rejected, and her dismissal by the school board was confirmed. The report suggests that no further evidence was considered.

Case 28 of 1937. The school board again questioned the legality of the teacher's application on the grounds that it had not met the statutory requirement for date of submission. In ruling on this question, the Board stated its views as follows:

> I think I must hold ..... that the date upon which the dispute or disagreement arose must be fixed as the date upon which the termination of the employment ends, not the date of the notice cancelling the agreement."[11]

Presumably the teacher's application had been filed within ten days of the expiry of the notice of termination.

The Board then proceeded to hear the case and, on the basis of favourable reports from the school inspector and evidence of satisfaction on the part of parents, reinstated the teacher.

It is difficult to avoid the impression that the second teacher

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[10]S.A. 1934, c. 30, s. 9.

[11]Report of Board to Minister, August 27, 1937.

received more lenient treatment than the first. In order, however, to come to a firm conclusion concerning the consistency of these two rulings, it would be necessary to know whether the same interpretation of the date on which the dispute arose was used in both. It would, further, be necessary to check the date on which each application was received against the date on which the corresponding notice of termination of contract expired. Unfortunately, these data have not been found. Further, it must be pointed out that evidence in case 28 revealed that the requirements of the Act had not been strictly followed in the calling of the school board's meeting at which the resolution to terminate the contract was passed. While not so stating in its report, the Board may have concluded that the one non-compliance counter-balanced the other, and that the case therefore should be decided on the basis of evidence bearing on the teacher's service in the school. It is interesting to speculate on what might have been the results of a revealed non-compliance on the part of the school board in case 15.

In recent years, an effort has been made to state more explicitly the limitation on the time of application. The pertinent subsection now reads as follows:

> (3) The application shall be sent by registered mail to the Minister not later than the thirtieth day of June in any school year, and
>
> (a) within twenty days of the giving of the notice of termination of the contract to the applicant, or
>
> (b) within twenty days of the date on which the dispute or disagreement is stated in writing, if no notice has been given.[12]

As a result of the changes made, the interpretation used by the

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[12] R.S.A. 1955, c. 297, s. 353.

Board in case 28 would no longer be possible.

The three remaining cases of this type involved non-compliance by the school board with the requirements for calling a meeting.

Case 25 of 1937. The teacher based his appeal chiefly on the alleged illegality of the meeting at which the school board had decided to dismiss him. He was able to show that the trustees had not signed the waiver of notice required by the Act. The school board's evidence showed that all trustees had been present at the meeting, and that the resolution to give the teacher notice of termination of contract had been passed unanimously. The Board's ruling on the question of compliance reads as follows:

> My view is that in these circumstances the purpose intended to be effected by the provisions of the said sections of the School Act, viz., to give an opportunity to all members of the board to attend the meeting, was in fact effected in this case.[13]

The hearing concluded with the Board confirming the dismissal of the teacher on the grounds that it was conducive to "the general welfare of the district." No more specific reasons were given.

At least one other case has been found in which the same ruling was given with respect to an improperly called school board meeting.

In these cases, the Board was taking the view that evidence of intention to meet the purposes of the legislation negates the effects of technical non-compliance. It has already been shown in Chapter V that the Board did not always take this view. True, most of the

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[13]Report of Board to Minister, July 22, 1937.

thirty-nine decisions against school boards on the basis of non-compliance were related to faults in the serving of notice of termination of contract; but cases involving the improper calling of school board meetings were not lacking. Two such cases will now be considered.

Case 11 of 1934. Here the evidence showed that the requirements of the Act had not been followed in calling the meeting at which the school board had decided to dismiss the teacher. The nature of the irregularity and the Board's ruling thereon are indicated in the following quotation from the Board's report:

> All the trustees were present and I am not overlooking the view that the trustees might be said to have tacitly waived notice by their conduct ..... My view, however, is that the provisions of section 113 are mandatory and not merely directory ..... The Board's action is, therefore, invalid, and the teacher's contract is still in full force and effect.[14]

It is assumed that the reference to the conduct of the trustees in the above quotation means that the resolution to terminate the contract had been passed unanimously.

It should be pointed out that, having issued the above ruling, the Board went on to say that it did not regret being forced to make it, since it was convinced that the appelant was a very good teacher and that the complaints alleged against him were without foundation in fact.

Case 29 of 1937. This was similar in both circumstances and outcome. Again, the Board was satisfied that the meeting of the

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[14]Report of Board to Minister, July 28, 1934.

trustees had not been legally called. The report reads in part as follows:

> Neither (sic) sections 111, 112 nor 113 were complied with and as the powers of the School Board are created by statute, I think it can only function by complying with the statutory provisions of the Act, and I must hold that it was not a properly constituted School Board meeting.[15]

On this basis, the teacher was reinstated, although, in this instance, the report suggests that the Board felt that the trustees had some justification for their desire to terminate the contract.

In other cases which it is not considered necessary to describe, the Board, having ruled that the school board had been guilty of non-compliance, has proceeded to consider evidence in favour of the teacher before making its decision in her favour.

Summary of these cases. The investigator is unable fully to reconcile the apparently conflicting treatments of statutory non-compliance in the cases considered in this section. In view of the limitations of his data, he prefers not to make a more definite statement on this matter. He is not, indeed, so anxious to prove inconsistency, as he is to show that the Board has experienced some difficulty in handling this problem, and has, not infrequently, shown some reluctance to base its decision solely on this ground. Evidence of this reluctance is available from sources other than the Board's own reports. As late as 1952, the solicitors for the Alberta School Trustees' Association were suggesting to the Executive of that body

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[15]Report of Board to Minister, August 28, 1937.

that it consider the advisability of seeking to have the School Act amended to provide:

> That where there has been imperfect compliance with respect to the calling of any meeting of the Board (i.e., school board), at which a resolution relating to the termination of the services of a teacher has been passed, or regarding the form or service of a notice to terminate a teacher's contract, the Board of Reference may, in its sole and absolute discretion, hear the parties and make a decision on the dispute or disagreement.[16]

This portion of the study has shown that the suggestion made in this letter deserves careful consideration, and a return will be made to the question in the concluding chapter.

A case imvolving a questionable decision.

There have been a few cases in which the Board has itself admitted uncertainty concerning the wisdom of its rulings. An example is considered below.

Case 4 of 1941. This was a case in which local politics had played a large part. The teacher had become involved in a feud between rival factions. The Board commented as follows on the situation revealed at the hearing: "Most, if not all, of the trouble in this School District is caused principally by one person, who seems, judging from the evidence, to run the affairs of the District."[17]

The Board made it clear that it had much sympathy with the teacher. It even expressed some doubt concerning the legality of the meeting of

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[16]Letter from Smith, Clement, Parlee and Whittaker to General Secretary, A.S.T.A., October 21, 1952.

[17]Report of Board to Minister, August 1, 1941.

the school board at which the dismissal resolution had been passed. Nevertheless, it finished by confirming the termination of contract. The wording in which the decision was couched is significant. "It is with great hesitation," said the Board, "that I recommend that the action of the majority of the School Board be not disturbed."[18]

Here, as in many other cases, the Board evidently felt that a decision against the teacher would be in her own best interests. The decision is not so much a reflection on the wisdom of the Board, as a comment on the quality of school administration in this particular school district in 1941. The reorganization of the Province into larger units of administration was still in its early stages. The conditions prevailing in this and many other districts made decisions of this type inevitable. It is, perhaps, significant that, as indicated in Table II, page 90, of the twenty-one decisions against teachers made on the basis of "the general welfare of the district," only five have been handed down since 1941, and only one since 1949.

A case illustrating imperfect procedure.

The chapter concludes, fittingly enough from the point of view of chronological order, with a consideration of the case most recently heard by the Board. As already indicated, it is studied chiefly because of the nature of the procedures followed.

Some attention has already been given to this matter in Chapter III, in the course of the discussion of statutory provisions related to

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[18] *Ibid.*

administrative details. At this stage in the study, the opinion was expressed that, in respect both to its legal framework and its actual operations, the Board of Reference meets quite well the criteria for procedure of a tenure commission. It was, however, mentioned that some of the authorities had argued in favour of closed hearings under special circumstances, and it was admitted that their arguments might, in certain conditions, carry considerable weight. It is proposed to pursue this question in the light of the case selected for this purpose.

Case 3 of 1958. The case was precipitated by the decision of the board of a school division to terminate the contract of one of its high school principals. All the legal requirements of this action were properly carried out. The Principal's application for a hearing indicated, as usual, that the nature of the complaint was unknown.

The hearing lasted for three days and aroused keen public interest, fifty to sixty spectators being present throughout. Local and city newspapers carried full reports of the proceedings, and commented at length editorially. The following quotation is taken from an editorial in one of the city papers:

> School boards today are not disciplining the teachers because the Teachers' Association, with the backing of the Department of Education, won't let them.[19]

Another newspaper charged the Alberta Teachers' Association with intimidation because its executive had asked teachers to check with its Head Office before applying for positions in the Division involved in

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[19]Editorial in Calgary Albertan, August 7, 1958.

the case. It is fair to say that the appelant, his professional organization, and the Department of Education received a great deal of unfavourable publicity as a result of the treatment of the case in the press.

The main charge advanced by the School Division was that the Principal had exercised poor discipline and that, as a result, the behavior of the students had become very bad. References were made to "wholesale necking" as characteristic of the moral tone of the school. Counsel for the school board called fourteen witnesses, including three teachers and four students. The defence called five, including the Superintendent and an officer of the Royal Canadian Mounted Police. It referred to difficulties of supervision resulting from continuing construction of classrooms, increased enrolment and shortage of staff. It alleged lack of cooperation on the part of some teachers.

The Board, having considered all the evidence presented, confirmed the termination of the principal's contract.

The circumstances of the hearing are considered unsatisfactory for three reasons.

In the first place, it was evidently tinged with a great deal of emotionalism of a type not conducive to the impartial administration of justice. In the second place, the presence of such large numbers of the community, both parents and students, must have been a source of embarrassment to the appelant, and may well have impeded the presentation of his defence. Finally, and most serious of all, the appelant was patently on trial as a principal, not as a teacher. It was for alleged

faults in his administration of the school, not for defects in his character or efficiency as a teacher, that he had been dismissed. Would it not have been more just to terminate his designation as principal while leaving his contract as teacher unimpaired? The Act, by virtue of an amendment then in effect for some years, would have permitted this action.[20] It is true that this would have shifted the appeal from the Board to the Minister; but the case could then have been settled without placing in jeopardy the professional reputation of the defendant.

The above comments are not intended as criticism of the Board for its handling of the case. It is difficult to see what other procedures the Board could have followed. The comments are intended, rather, to raise the question whether the double vulnerability of principals justifies some strengthening of their tenure rights, and to repeat the question concerning the advisability of closed hearings. The study will return to the first of these questions in the concluding chapter.

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[20]R.S.A. 1955, c. 297, ss. 372, 373.

PART III

CONCLUSION

CHAPTER VIII

FINDINGS AND RECOMMENDATIONS

I. FINDINGS

The statement of findings begins by offering answers to the questions raised in Chapter I. For the convenience of the reader, each of these questions is restated as an introduction to the relevant answer.

Findings relating to legislation

Since questions 1 and 2 both deal with the statutory provisions, they are considered together.

Question 1. To what extent do the statutory provisions under which the Board has operated, viewed in conjunction with other enactments related to teacher contracts, meet the requirements of sound tenure legislation?

Question 2. To what extent do the many amendments made in these provisions represent an increasingly close approach to these requirements?

These questions have been answered in some detail in the course of the examination of the legislation in Chapters II and III. A summary of the answers is now presented. Since the answers have been based on the seven criteria of tenure legislation adopted in Chapter I, each portion of the summary is introduced by quoting the relevant criterion.

Criteria 3 and 5 are treated together at the end of the section.

Criterion 1. A probationary period during which the teacher's contract may be terminated without appeal.

The study has found that this requirement did not come into the Alberta Act until 1956, thirty years after the Board had begun its operations. It was then inserted into the provisions governing the Board, rather than into those directly related to termination of contract, as has been done elsewhere.

The study has pointed out that the length of the probationary period in Alberta - one year - is shorter than that in effect in many parts of the United States and in other provinces of Canada. It has suggested that some increase might be desirable, and that some conditions related to extent of professional training might be attached to the attainment of tenure status.

It was found that the non-transferable feature of probation in Alberta is in conformity with practices elsewhere.

Criterion 2. Specification of the grounds for termination of the contract of a tenure teacher.

Here, again, the study has found that the Alberta legislation was somewhat late in meeting the requirement, the Board having operated for eight years without such specification. Since their insertion in 1934, however, the directions given have served their purpose adequately. The investigator has found them unsatisfactory only because their wording seems to place the burden of proof on the appelant teacher.

Criterion 4. Requirement that the notice to the teacher state the alleged grounds for termination.

With respect to this criterion, the Alberta legislation has been shown to be inconsistent. On the one hand, the provisions governing the Board of Reference have always required an application for a hearing to be accompanied by "a complete statement of the nature of the complaint or dispute." To this extent, the legislation meets the requirement by implying that the teacher, in order to make the statement required, must have received a communication from the school board giving the reasons for dismissal. In spite, however, of this demand made upon the applicant, the Act has never required a school board to give this information to the teacher. It is true that the contract in effect during the second half of the twenties did provide that the school board could not give notice of termination without providing the teacher with an opportunity to hear and discuss its reasons. When the continuous contract came into effect in 1931, however, this form of contract became obsolete. The teachers gained the continuous contract at the expense of losing this requirement of sound tenure, which, except by way of the former contract form, has never been recognized in Alberta law.

Criterion 6. Provision for appeal by a dismissed tenure teacher to a disinterested authority having statutory power to bind both parties to the dispute.

The study has found no evidence that the Board has ever lacked disinterestedness. Some of the officials interviewed have expressed the view that this requirement has been more perfectly met since 1934, when the

teacher and trustee representatives were dropped. In the same year, the Board was given the power to make binding decisions. Since that date, the criterion has been fully satisfied with respect to those matters of tenure over which the Board has been given jurisdiction. The question has been raised whether, in order to apply the requirement of disinteredness to all tenure cases, the Board should be given exclusive jurisdiction over summary dismissals, which the Act apparently makes referable either to the Board or to the Minister.

As pointed out in Chapter III, recent developments have indicated the need to clarify the jurisdictions of the Minister and of the Board in this area. A recommendation bearing on this matter is made later in the Chapter.

Criterion 7. Procedure at hearings consonant with those obtaining in a court of law.

The investigator has found that the reference in the Alberta legislation to the compellability of witnesses[1] and to the Public Inquiries Act[2] have met this requirement. He has, further, found that the hearings conducted by the Board, more particularly those conducted since 1934, while not completely formal, have consistently maintained the standards of legal decorum. With respect to procedures leading up to hearings, he has suggested that withdrawals of applications be made subject to some limitation with respect to dates, chiefly with the aim of discouraging

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[1]R.S.A. 1955, c. 297, s. 356.

[2]R.S.A. 1955, c. 258.

frivolous applications.

Criteria 3 and 5. These relate to the steps to be followed by a school board and by a teacher, respectively, in terminating a contract. It is necessary only to say that, with the single exception mentioned under criterion 4, the investigation has found that the Alberta legislation satisfies these criteria.

The question of the discrepancy between dates on which notices must be delivered by school boards and by teachers, respectively, has not come within the scope of this study.

Summary. The answers given above to questions 1 and 2 may be summarized by saying that, from a rather unpromising start in 1921, the Alberta legislation has moved fairly steadily in the direction of conformity with the criteria. The amendments of 1934 and 1956 provided the greatest impetus, the former being definitely a critical year.

The Alberta provisions, however, still fail to meet the criteria in two important respects. In the first place, a school board is under no legal obligation to provide a teacher with a statement of its reasons for terminating his contract. In the second place, the Board of Reference shares jurisdiction with respect to terminations of contract with another authority whose immunity from political pressures is less inviolable. With these two exceptions, the provisions under which the Board now operates satisfy the criteria.

Findings relating to Operations of the Board.

Question 3. What implications do the decisions handed down by the

Board of Reference have with respect to the conduct of teachers and trustees?

This question was answered quite fully towards the end of Chapter VI. The answer is summarized below.

The Board's decisions suggest that "reasonable" action on the part of trustees includes maintaining an attitude of alertness to the competency and moral conduct of members of their teaching staff. Trustees may properly give attention to complaints of parents and electors, but must not base terminations of contract on such complaints until they have been fully investigated and substantiated. Finally, trustees have responsibilities with respect to the teaching loads of their teachers.

With respect to teachers, the Board's decisions imply that, to deserve security of tenure, a teacher must demonstrate competence in the position occupied. Competence involves a sense of responsibility with respect to professional qualifications. Tenure status also demands avoidance of morally offensive behavior, which, however, must be fully proven to justify dismissal. Finally, while a teacher should not be dismissed for failure to perform a function not required by the Act, his security of tenure is dependent upon his ability and readiness to maintain good relations with his students, with other members of the teaching staff and with residents of the community in which the school operates.

Question 4. Is there any indication that decisions of the Board of Reference have not been conducive to good school operation? Specifically, to what extent have these decisions tended

(a) to freeze incompetents in the teaching profession,

(b) to discourage professional self-improvement on the part of the teacher?

While Table III, page 100, indicates that the reports of school inspectors have been a decisive factor in relatively few of the Board's decisions, only two cases have been found in which the Board has reinstated a teacher about whose competence any serious doubt has been expressed by an inspector. In the first of these (case 1 of 1942), reinstatement was made because of statutory non-compliance on the part of the school board in the calling of the meeting at which the dismissal resolution was passed. In the second (case 3 of 1952), the inspector was not present at the hearing to support the opinion expressed in his report. In view of this record, it is fair to say that the Board has shown no inclination to freeze incompetents in the profession. On the other hand, it has not infrequently confirmed the dismissals of teachers whom it has found apathetic towards professional improvement.

Question 5. What influences, if any, have changes in the form of school administration exerted on the activities of the Board of Reference?

The most significant change occurring in the period covered by the study is, of course, the introduction of the enlarged rural unit of school administration. The legislation authorizing the establishment of school divisions[3] was passed in 1936, and the reorganization was substantially completed by 1943. In commenting on the figures shown in

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[3]S.A. 1936, c. 85, s. 16.

Table I, page 80, it was pointed out that over 72% of the applications recorded had been made during the first ten of the twenty-seven years covered by the table, i.e., from 1934-1943 inclusive. While the study has not produced any proof that the enlargement of the unit of school administration caused the decline in applications, the figures, considered against the background of this change, strongly suggest such a relationship.

Question 6. What light, if any, do the operations of the Board of Reference throw on the evolution of teacher-trustee relations in this Province?

The data in the same Table suggest even more strongly the answer to this question. The decrease of applications has combined with the increase of withdrawals to reduce the hearings of the Board to the vanishing point. If the activity of the Board of Reference can be regarded as an indicator of the warmth of teacher-trustee relations in this province, the conclusion is inescapable that these relations have immeasurably improved since the dark days of the midthirties.

Question 7. To what extent does the history of the Board of Reference justify its continued existence, in its present or a modified form, as the agency for the settlement of tenure disputes in Alberta?

The answer to this question has been suggested in that given to question 4. Its full statement is included among the recommendations at the end of this chapter.

Findings Not Related to Questions.

Three other findings, not directly related to the questions with

which the investigation started, but which have been stated in earlier chapters, will bear brief repetition. Where doubt concerning efficiency or conduct has existed, the Board has tended to give the benefit to the teacher. This has been especially true where the school board's decision to dismiss has not been unanimous. On the other hand, the Board has shown full awareness of its responsibilities to protect, not only teachers against irresponsible and capricious school boards, but, equally, school boards against inefficient or immoral teachers. Finally, the sharp decline in the number of decisions based on statutory non-compliance illustrated in Table II of Chapter V strongly suggests that the operations of the Board have resulted in school boards becoming far more circumspect in the matter of legal requirements for termination of contract.

II. RECOMMENDATIONS

The recommendations listed below are made on the basis of the findings reported in the previous section.

Recommendations Concerning Legislation.

1. It is the writer's conviction that provisions related to teacher tenure are of sufficient importance to require explicit statement. He, therefore, recommends that the legislation governing termination of contracts be amended so as

(a) to include and define the terms "probationary teacher" and "tenure teacher";

(b) to distinguish between the conditions for termination of contracts of probationary and tenure teachers respectively.

The implementation of this recommendation would provide an opportunity to relate tenure status to professional training and experience. The question of the desirability of establishing such a relationship was raised in Chapter III. Beyond the discussion of practices elsewhere, however, this study has not produced evidence on which decisions of this nature might be based.

2. It is recommended that section 340 of the School Act pertaining to dismissal of teachers be amended so as to require a school board, when giving a tenure teacher notice of termination of contract, to state its reason for so doing. This amendment would enable a teacher applying for a hearing by the Board to comply with the instructions in section 353(1). More significantly, it would remove the gravest defect in Alberta tenure legislation.

3. It was pointed out in Chapter V that only three applications for hearings have been made by school boards, and that no such application has occurred since 1939. The cases involved might have been dealt with by the A. T. A. Discipline Committee. For breach of contract a school board also has recourse to the courts.

It is, therefore, recommended that section 352, concerning applications, be amended so as to limit the right of appeal to the Board of Reference to tenure teachers.

4. It is recommended that subsection (3) of section 355, which gives the Board directions concerning acceptable grounds for termination of contract, be amended so as to place the onus of proof on the school board purporting to terminate the contract rather than on the appelant teacher. The outline of a rewording having this effect was proposed

in Chapter III.

5. In Chapter V it was pointed out that, since 1940, no school board has alleged "financial necessities or circumstances of the district" as a reason for terminating a teacher's contract. It would seem reasonable to hope that economic conditions in Alberta will continue to combine with the prevailing climate of public opinion concerning the importance of education to render appeal to this reason unnecessary. It is recommended that it be deleted from the list of grounds for dismissal in the above-mentioned subsection.

6. It is further recommended that, in the same subsection, "insubordination" be substituted for "misconduct" in the list of reasons for termination of contract, and that the following additions be made to this list:

(1) "educationally justfiable abolition of position";

(2) "any other reason deemed valid by the Board."

7. The study has dealt at some length with the problem of statutory non-compliance. It has pointed out that this problem has been one of some concern, both to the Board and to counsel for parties involved in hearings, and that the consistency of the Board's treatment of the problem has, at times, been questionable. There seems to be some reasonable doubt as to whether the Board should be bound by the procedures of a court of law in dealing with this matter.

It is, therefore, recommended that the Department consult with the A. T. A. and the A. S. T. A. concerning the wisdom of inserting in the Act directions to the Board for its disposal of cases involving

technical non-compliance by either party with provisions related to termination of contract.

8. It has been pointed out that the processing of applications requires a considerable amount of work on the part of legal counsel and Departmental officials. In order to avoid unnecessary work and to discourage frivolous appeals, it is recommended that section 354 be amended so as to require a teacher who does not wish his case to come before the Board to withdraw his application within two weeks of its submission.

Recommendations Concerning the Board's Operations.

9. In conducting its hearings, the Board has opportunities to acquire insights into the personalities of teachers which may well be of value to those responsible for making decisions concerning their placement. It is recommended that the Board be encouraged to include in its reports to the Minister any recommendations it may wish to make concerning the future employment of teachers who have brought disputes to it for settlement. Any such recommendations might, at the discretion of the Minister, be made available to the teachers involved and to school boards to which they make application for employment. In this way, the value of the Board as an agency of efficient school operation would be considerably enhanced.

10. The study has shown that the Board of Reference has been an essential element in the framework of teacher tenure in Alberta. It is true that its relative inactivity in recent years indicates a definite improvement in teacher-trustee relations during the past decade.

Nevertheless, it would be unwise to regard this inactivity as proof of the Board's uselessness. Aside from considerations of its past contributions, the teachers of the Province have an inalienable right to the protection which it affords, no matter how rarely this protection is required. It is recommended that it be retained. Questions concerning its jurisdiction and personnel have been raised and appear below in the recommendations concerning further studies. Whatever decisions may be made on these matters, the investigator is firmly of the opinion that a legally constituted teacher tenure commission should continue to operate in Alberta.

Recommendations Concerning Further Studies.

In the course of this study, the writer has glanced briefly at a number of problems which he has been unable to pursue. Some of these are listed below as subjects deserving investigation.

11. It is recommended that a further study of decisions of the Board be made to determine

(a) what, if any, relationship exists between these decisions and the qualifications and experience of the teachers involved;

(b) what effects, if any, the decisions have had on the professional careers of these teachers.

12. It is recommended that an investigation be made of costs of Board of Reference operations to

(a) the Province;

(b) the A. T. A. and individual teachers;

(c) the A. S. T. A. and individual school boards.

13. The recently opened question of the Board's jurisdiction in the matter of summary dismissals has received some attention. It is recommended that an investigation be made of the legislation governing summary dismissals,[4] together with the hearings of resultant appeals conducted by the Minister, with the purpose of assessing the relative desirability of

(a) leaving teachers with the option which the legislation now apparently gives them;[5] or

(b) putting this matter under the exclusive jurisdiction of the Minister or of the Board.

Some of the criteria accepted in this investigation would seem to suggest the desirability of giving the Board exclusive jurisdiction. Since no cases involving summary dismissal have been considered, however, it is not considered that this study provides a basis for any recommendation other than that made above.

14. It is further recommended that a similar study be made of the legislation governing terminations of designations of principals[6] and of related appeals to the Minister, with the aim of determining whether these terminations should also be brought under the jurisdiction of the Board.

15. A comparative study of tenure legislation in other provinces

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[4]R. S. A. 1955, c. 297, s. 350.

[5]Opinion received by Deputy Minister of Education from Attorney General's Department, June 14, 1961.

[6]R. S. A. 1955, c. 297, ss. 371 - 373.

and in other countries is recommended, with the aim of establishing criteria for decisions concerning

(a) the length of the probationary period;

(b) the transferability of tenure status on removal from one employing unit to another;

(c) the procedures to be required of school boards and teachers in terminating contracts, with particular attention to dates for delivery of notice.

16. Finally, it is recommended that a comparative study be made of the operations of tenure commissions in other provinces of Canada and in other countries of the Commonwealth. Such a study might have the purpose of determining criteria for the selection of personnel and the limitations of jurisdiction of such commissions. Specifically, it might seek to reach conclusions concerning the desirability of teacher and trustee representation. It might also attempt to define the optimum relationships between the powers of such agencies, on the one hand, and those of the central authority, on the other, in all matters affecting teacher tenure.

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A P P E N D I X

A P P L I C A T I O N

CANADA

Province of Alberta

IN THE MATTER OF The School Act 1955, being Chapter 297, Revised Statutes of Alberta, 1955 and amendments thereto;

AND IN THE MATTER OF an application by ..... of the ..... of ..... in the Province of Alberta to the Minister of Education in the Province of Alberta pursuant to Section 352 of the said The School Act and Amendments thereto;

The application of ..... of the ..... of ..... in the Province of Alberta, showeth that;

(1) The full name of the applicant is ..... of the ..... of .....in the Province of Alberta, and that he (she) is a fully qualified teacher holding a ..... certificate of qualification valid in the Province of Alberta and issued by the Minister of Education of the said Province under The Department of Education Act and that the applicant has had ..... years of experience as a teacher in the Province of Alberta.

(2) The applicant has been in the employ of the Board of Trustees of the .....School District (or Division) of the Province of Alberta, number ..... for ..... years.

(3) The Board of Trustees of the said School District (or Division) did deliver or cause to be delivered to the applicant a communication which purports to be a notice of termination of the applicant's contract as a teacher. The said communication was delivered by ..... (here set forth whether by registered mail, personal service, ordinary mail, etc.) on or about the ..... day of .....A.D. 19..... The said communication was in the following terms: (here set forth exact copy)

(4) So far as the applicant knows, the nature of the complaint or dispute between the applicant and the said Board of Trustees is as follows: (here set forth details)

(5) The said Board of Trustees in seeking to terminate the said contract did not act as reasonable persons should act in the discharge of their duties as Trustees, nor did they do so by reason of misconduct or inefficiency of the applicant, nor by reason of anything in the mode of life, character or disposition of the applicant of a nature calculated to make the retention of the applicant detrimental to the proper and efficient conduct of the school, nor by reason of the financial necessities or circumstances of the district, nor for the reason that termination of the contract would be conducive to the general welfare of the district or the betterment of the educational facilities therein.

(6) Accompanying this application is the sum of Twenty-Five ($25.00) Dollars deposit required under the provisions of Section 353 (2) of the said The School Act.

(7) The Applicant has notified the said Board of Trustees of this application and has sent to the said Board of Trustees a copy of this application.

DATED at the ..... of .....in the Province of Alberta, this .....day of .....,A.D.19...

_____
Applicant